

6  
A

*from the Author*  
15 J. 1

T R E A T I S E

UPON

THE LAW OF

USURY AND ANNUITIES

BY

FRANCIS PLOWDEN

OF THE MIDDLE TEMPLE,

BARRISTER AT LAW.

---

Nullus argento color est—  
— nifi temperato  
Splendeat usu. HOR.

---

L O N D O N :

PRINTED FOR J. BUTTERWORTH, FLEET-STREET.

MDCCXCVII.

17



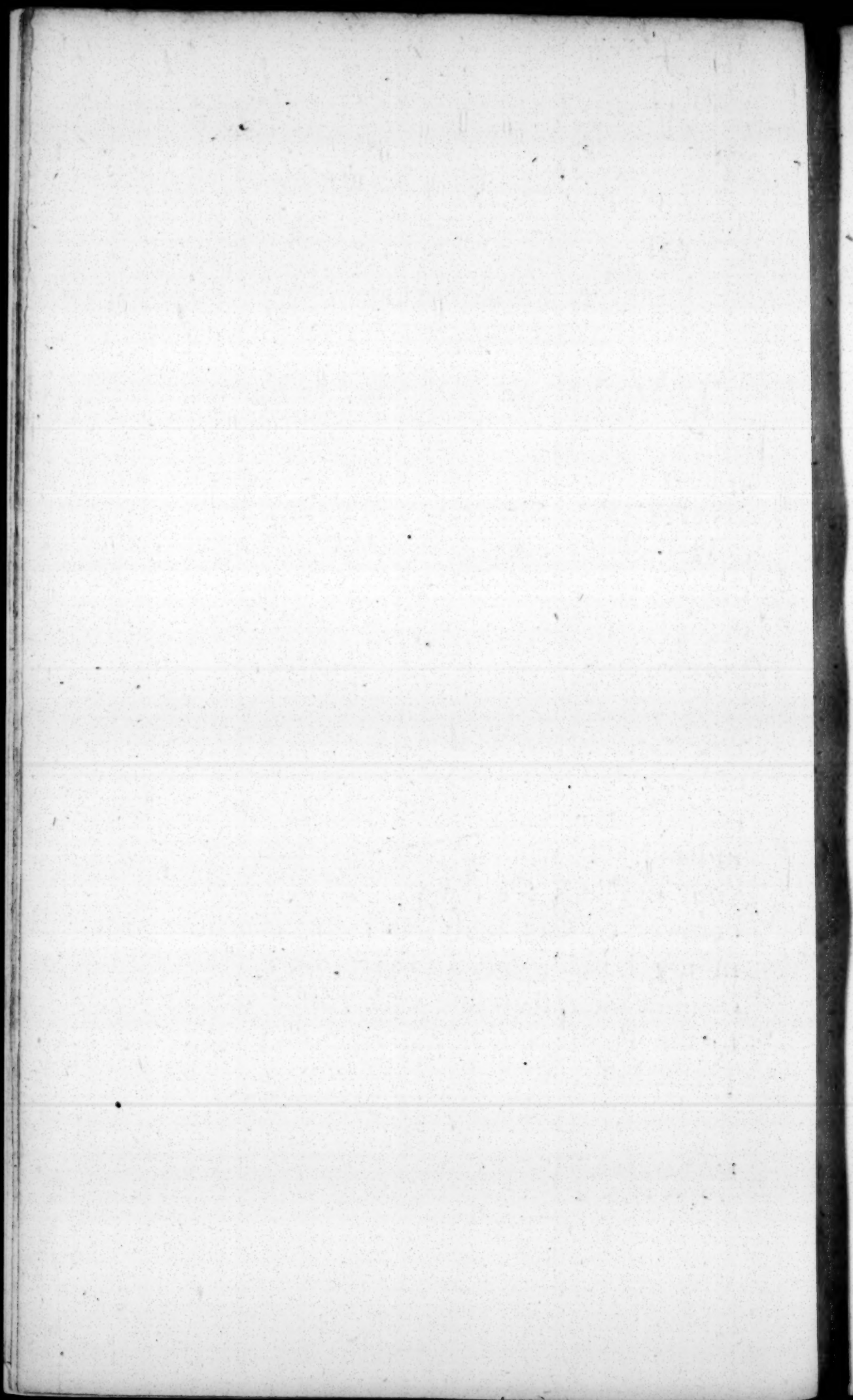


TO  
THE HONORABLE  
THOMAS ERSKINE.

NOTHING, Sir, can more forcibly evince the importance of the subject of the following Treatise, than that it once engaged the powers of your mind. A grateful Public admired the penetration judgment and eloquence, with which you warned them of the baneful effects of USURY and ANNUITIES, and a sympathizing Parliament instantly took the cure in hand. The immoveable firmness of your opinions, for the welfare of your country ensures me your countenance in my humble efforts to promote it. I commit them therefore with confidence to the Public under the ægis of your protection.

FRANCIS PLOWDEN.

ESSEX-STREET, }  
Dec. 1796. }





# C O N T E N T S.

---

## P A R T I.

### O F U S U R Y.

---

INTRODUCTION - - Page 1

#### CHAP. I.

##### OF USURY IN GENERAL.

*Prejudices against Usury—Nature of Usury—Jewish Usury—Opinion of Divines the Source of our Common Law of Usury—Difference between Practice and Opinion—What Jewish Usury was as to it's Nature and Obligation—The Texts of the Old and New Testament shortly considered—Opinions of some of the Greek and Latin Fathers against Usury—Opinions of the Divines of the Reformed Churches—St. Thomas Aquinas and Calvin agree in it's Lawfulness—Horror of Usury in the Reigns of Elizabeth and James—Chinese Interest at 30 per Cent. allowed of—Papal Condemnations of Usury—Bishop of Durham in the 13th Century commanded to pay Interest*  
a by

*by the Pope—Brief of Benedict XIV against Usury—General Obligation of Philanthropy—Whether the Borrower be Particeps Criminis—Nature of Property in general—Difference of the Spiritual and Temporal Powers—True Sense of the Usury spoken of by most of the Fathers* - - - Page 9

## C H A P. II.

## OF USURY BY THE COMMON LAW OF ENGLAND.

*How the Common Law is affected by Statutes—Lord Coke's Opinion questioned as to the Abolition of the Common Law—The Repeal made by the 37 Hen. VIII. cannot apply to an unwritten Law—Usury punishable in the Ecclesiastical Courts by Common Law—Difference between that Usury which was punishable in the Spiritual Courts and that which was punishable in the Common Law Courts—The Opinions of Bracton Glanville and Fleta on Usury—Usury allowed to the Jews by Common Law—The Statute of Merton affected only the Jews* - - - Page 60

## C H A P. III.

## OF THE JEWS AND JUDAISM BY THE LAWS OF ENGLAND.

*Of the Introduction of Jews into England—Observations upon their State of Vagrancy—Of the first Law concerning them in England—Nature of Laws concerning Religious Belief—What was Judaism by the Laws of England—Prejudices of our Historians against the Jews—*

## CONTENTS.

vii

*They acquired a Settlement under Richard I.—New Laws for the Jews; they were governed like a Corporation by Bye-laws—Oppressed by Hen. III.—His Prerogative checked by Parliament's appointing a Judge over the Jews—Nature of the Crimes imputed to the Jews—Henry III.'s Reasons for oppressing the Jews—Statute de Judaismo—Lord Coke's Comment upon it—Prynne's Difference from Lord Coke about the voluntary Banishment of the Jews—It appears to have been compulsory by Parliament—Alteration of the Laws concerning the Jews—For the last 505 Years no other Acts passed concerning the Jews but such as are beneficial - - Page 83*

### CHAP. IV.

#### OF USURY BY STATUTE LAW.

*Statute of Merton 1235—Two Acts in the third Year of Henry VII. ch. v. and ch. vi. and another Act in 11 of Henry VII. (c. viii.) 37 Henry VIII. c. ix. 5 and 6 Edward VI. c. xx.—Observations and Debates upon the Act of Elizabeth. 21 Jac. I. c. xxii. 12 Car. II. c. xiii. 12 Ann. c. xvi. 3 Geo. I. c. viii. - Page 125*

### CHAP. V.

#### UPON THE DETERMINATIONS OF THE COURTS IN CASES OF USURY.

*Nature of the Difference between Usury by Common Law and by Statute Law—What Acts and Contracts the Courts have determined to be Usurious—Corrupt Contracts*



*tract and Corrupt Taking without such Contract—Corrupt Bargain and Taking completes the Offence, for which the Statute gives treble Damages—How far the Common Law and Statute Law co-operate upon Usurious Acts—Of Corrupt Agreements without taking excessive Interest and vice versâ—Examination of Lord Chief Justice De Grey's Opinion upon the Requisites to constitute the Statute Offence—No Action will lie at Common Law for Interest or Usury—Attempts and Shifts to evade the Statutes of Usury—Furnishing Goods instead of Cash for raising Money on them Usurious—Every Excess of legal Interest in Value as well as Money Usurious, if the Party intend to make more than legal Interest—Usage of Trade sometimes justifies the Taking of more than 5 per Cent—Usury often depends upon the Intention of negotiating Parties—Whether the Interest may be withholden at first—Of discounting Notes—Of taking excessive Interest on Default of Payment on a given Day—Where Principal and Interest at Hazard no Usury—Bottomry Bonds and Loans on Contingencies and hazardous Bargains—Slight Hazards take not a Case out of the Statutes—Whether a Loan necessary to constitute Usury?—Nature of Continuation Premiums—The Intent makes Usury—Of taking 6 per Cent. on Securities in Ireland and the West Indies—Of personal Contracts entered into in Foreign Countries—Redress and Remedies of Usury—Usurious Contract avoids the Security—Whether void Securities valid in the Hands of Third Persons not privy to the Usury—Borrowers may avoid their own Acts in Usury* - - - - Page 145

## PART II.

### OF ANNUITIES.

---

#### CHAP. I.

##### OF ANNUITIES IN GENERAL.

*POLITICAL Tendency of Life Annuities, particularly as to Members of Parliament—How Advantage taken of Distress to be considered—What Annuities and Rent Charges—Annuity by Prescription—Effects of the Remedies for recovering an Annuity—How Grants operate with or without the Word Heirs—How Grants void as Rent Charges may be good as Annuities—How Annuities may be affected: they are assignable—Of the Election and how determinable by the Grantee—How they become extinct—Of the Remedies—Where Writ of Annuity lieth, and where Debt—Where Lands lie in divers Counties, no Assize but Writ of Annuity lieth. Page 227*

#### CHAP. II.

##### OF ANNUITIES FOR THE LIVES OF THE GRANTORS.

*Intent of the Chapter—Propriety of imposing legal Restraints in Money Loans—Fatal Consequences of raising Money*

## CONTENTS.

*by Life Annuities—Of rescinding the Contracts for Annuities—Of Circumvention and Physical and Moral Necessity—Effects of raising Money by Annuity formerly and now—Whether Annuities can be Usurious: Lord Hardwicke's Opinions upon these Transactions—Cases in which Annuities were not Usurious—Of the Clauses of Redemption or Re-purchase having been once thought Usurious: now holden not to be so—Whether Insurances render the Transactions Usurious—Of the Adequacy of the Consideration of Annuities—Bare Inadequacy of Price not sufficient to rescind an Annuity in Law or Equity—Of illicit Considerations—Of Annuities charged upon Officers' Pay and Half-pay, and Clergymen's Livings—The Difference of Whole and Half-pay now exploded—Neither of them assignable—Clergymen's Livings not assignable or chargeable by Common Statute or Canon Law—Of avoiding Annuities charged on Livings and secured by Bond and Judgment - Page 249*

## CHAP. III.

## OF THE ANNUITY ACT.

*Introduction of the first Bill to Parliament by Mr. Wedderburne 1777—It's Nature and Objects more general than the present Act—Progress of the Bill—Division of the Plan—First Bill dropped—New Bill brought in—Committee appointed to consider and report upon the Laws concerning Usury—Their Report and another Bill brought in upon it to regulate Annuities for Lives—It went only to a Committee and there dropped—Notoriety of the Transaction a principal Object of the Act—Nature and Equity of the Act—Of the Preamble of the Act—Of the first Section*



## CONTENTS.

xi

*tion of the Act—Difference between Registry and Inrolment of Deeds—Great Caution in the Legislature to render the Transaction notorious—The particular Objects of the Act—Of the Consideration of granting the Annuity and whether the Law Expences and Premium make part of it—Of secret Trusts in Annuities—Of the second Section of the Act—Of the third Section—Of the Meaning of the Consideration being in Money only—Of specifying the Names of Parties and the Modes of Payment and to whom in the original Deeds—Of the fourth Section which is of a complex Nature—Fifth Section of the Act—Sixth Section—Of Contracts being avoided—Seventh Section—Eighth and last Section—Of the Exceptions—The Exceptions of Annuities granted by Tenant in Tail and in Fee-simple introduced by Solicitor General: not to be extended beyond the strict Words of the Act - Page 316*

## CHAP IV.

### OF THE DETERMINATIONS OF THE COURTS UPON THE ANNUITY ACT.

*Of the Tyrannical Principle of giving Operation to Acts of Parliament from the first Day of the Session even before they were framed—Several Instances of the Injustice operated thereby—This Injustice put an End to by the 33 Geo. III.—Every Deed to be inrolled by which an Annuity is secured—Warrant of Attorney such an Assurance—The Judgment not so—Of registering Assignments—Of specifying the Dates of the Deeds and the Names of Witnesses in the Memorial, and all the Trusts of the Deed—Inconsistency of the Decisions upon all the Trusts being set forth—Of the Consideration of granting the Annuity—Of*

*Bankers' Checks and Promissory Notes—Bank Notes taken as Cash—Of specifying the Mode of paying the Consideration—Of setting it forth falsely and the Consequences of it—Of paying the Consideration at different times—Of the Terms of the Contract making a Part of the Consideration—Of the Law Charges making a Part of the Consideration—Of the twenty Days given by the Statute for registering—Difference of Opinion of the King's Bench and Common Pleas upon the Necessity of inrolling an Assignment—Of one Annuity's being the Consideration of another—Of the Difference between the first and the fourth Section of the Act—Of all the Deeds being void by the Nullity of one of them—Of stating in the Deeds the Names of the Agents who pay the Consideration-Money—Of the fourth Section—Of retaining a Part of the Consideration—Of the Persons who may apply to the Courts for Relief under the fourth Section—Of being barred by Length of Time and Laches of the Parties—Of the Court's Discretion in entertaining Applications—Of the Difference in the Opinions of Lords Loughborough and Kenyon upon the Limitation of Time—Of the Province of the Courts—What Courts may entertain Applications under the Act—Of the Jurisdiction of the Courts with or without Actions commenced—Whether Grantors who do not confess Judgments be precluded from the Benefit of the Act—The Courts act upon the Cases within the Statute according to their original Jurisdiction—Of the Contract with Minors being avoided—Whether all Contracts be avoided where the Securities are null—Of the Punishments of Misdemeanors under the Act—Of the Cases excepted out of the Act - Page 352*

# ALPHABETICAL LIST

OF THE

## CASES

QUOTED IN THIS TREATISE.

### A

	Page
ANCASTER Duke of v. Pickett	171
Adlington v. Cann and Andrews	172
Auriol and another v. Thomas	179
Abrahams qui tam v. Bunn	216
Ardglafs v. Muschamp	283
Attorney General v. Panter	355
Austin v. The Executors of Sir William Dodwell	376

### B

Brown v. Fulbye	156	219
Body v. Taffel	156	219
Barker v. Vanfommer and others	169	
Barnes v. Worlick	177	
Benfon v. Parry	179	
Bodily v. Bellamy	180	208
Burton's Case	183-5	
Bedingfield v. Ashby	191	
Ballard v. Oddie	201	
Boothe v. Cooke	201	
Bucler v. Miller	201	
	Busk	



	Page
Bush v. Buckingham	- 201
Bulkley v. Guilbank	- 201 265
Browning v. Morris	- 210 215
Bowyer v. Bampton	- 214
Bosanquet v. Dashwood	- 215 217
Bede v. Sanderfon	- 223
Bodvell v. Bodvell	- 236
Brown v. Richards	- 270
Berney v. Pitt	- 283
Butler and Parnell assignees of Edward Richardson a bankrupt	- 290
Bolton Duke of v. Williams	314 360-4-5 386 396 399 405 425
Bromley v. Greathead	- 365 400-1
Berry v. Bentley	- 377-8
Broomhead v. Eyre	- 391 407 410 450
Bellingham v. Alfop	- 411
Berwicke v. Read	- 433
Beauchamp v. Barret	- 442

## C

Chesterfield v. Janfon	162-6 188-9 259 261 277 283
Cecil v. Sutton and Roundtree	- 170
Cotterel v. Harrington	- 262
Clarkson v. Hanway	- 283
Coles v. Gibbons	- 283
Crow v. Ballard	- 283
Cole v. Gibson	- 285
Crouch v. Martin	- 289
Carter v. Claycoles	- 300
Cousins v. Thomson	- 376 393 416
Cox v. Wright	- 379 403
Chester ex parte	- 395 423
Craufurd v. Caines	- 426-8
Crespigny v. Wittenoom	- 441 450-5
	Davison

# LIST OF CASES.

xv

## D

	Page
Davison <i>v.</i> Barnard Pitt	- 170
Dewar and Span	- 205
Dixy's Sir Woolaston Cafe	- 218 222-3
Davidson <i>v.</i> Foley	- 314 359 366 395
Dann on dem. of Dolman <i>v.</i> Dolman	- 357 370
Dixon <i>v.</i> Birch and Toyte	- 365 401
Downes <i>v.</i> Packurst	- 366

## E

Ellis <i>v.</i> Warnes	- 213
Emmott and Fulwood's Cafe	- 221

## F

Fisher qui tam, &c. <i>v.</i> Beasley	- 152 218
Floyer and Edwards	- 163-6 173
Fitzroy <i>v.</i> Gwillim	- 217
Fermor's Cafe	- 219
Foster's (Dr.) Cafe	- 221-2
Fullwood <i>v.</i> Ward	- 241-2
Fountain <i>v.</i> Grimes	- 260-7-8
Fuller's Cafe	- 262
Floyard <i>v.</i> Sherrard	- 279
Fox <i>v.</i> Mackreth	- 283
Flarty <i>v.</i> Odum	- 294 5-6 433
Fenner <i>v.</i> Evans	- 379 384
Fallon ex parte	- 382 394 402
Franco <i>v.</i> Lindo	- 442

## G

Garratt <i>v.</i> Foot	- 184
Le Grange <i>v.</i> Hamilton	- 202
Goldsmith <i>v.</i> Bunning	- 214
Gerard <i>v.</i> Boden	- 239
Goad's (Dr.) Cafe	- 261
Griffith <i>v.</i> Spratley	- 276

Guynne

	Page
Guynne v. Heaton	- 280-3
Grainger v. Wyvill	- 290
Gomez v. Graham	- 290-3
Grant v. Foley	- 399 401 414 419
Garrood v. Sanders	- 410 421 425 431-5

## H

Hodges v. Lovatt	- 217
Van Henbeck's Cafe	- 219
Harning v. Castor	- 219 222
Hooper v. Lawley	- 265
Heathcote v. Paignon	- 276-7-80
Henly v. Acton	- 280
Harrington v. Du Chattel	- 285
Hill v. Good	- 299
Hunt v. Singleton	- 300
Hodges v. Money and Bailey	- 314 359 393
Heart v. Lovelace	- 314 366 398 430 432
Henley Sir Robert v. Jones	- 355
Hopkins v. Waller	- 355-9 395
Hall v. Whalley	- 355
Hood v. Burlton	- 358 367
Haines v. Hare	- 421

## J

Jestons v. Brookes	- 173-5
Joy v. Kent	- 190
Jaques v. Golightly	- 216
Irnham v. Child	- 271 422
James v. Morgan	- 283
Jaques v. Withy	- 381
Ince v. Everard	- 383

## K

The King v. Walker	- 157-8 212
Ditto v. Upton	- 157
	King



# LIST OF CASES.

xvii

	Page
King v. Drury	- 262
Keen v. Stukely	- 279
Kennedy, Captain, a bankrupt	- 294
Kirkman v. Price	- 380-5
The King v. Gilham	- 451
Ditto v. Burdet	- 452

## L

Lloyd v. Williams	- 153-5-7-60 179 218
Lawley v. Hooper	- 165 258 268 270 274 282
Low and others v. Waller	- 167 171 212 214
Long v. Wharton	- 190
Loveday's Cafe	- 195
London, City of, v. Richmond et al.	- 280
Litterdale v. the Duke of Montrose and Lord Mulgrave, Paymasters General of the Army	- 295-6 433
Latlefs v. Holmes	- 334-5

## M

Murray v. Hardinge	162-4-6 195 202 258 263 270 300-2 332
Morse v. Wilton	- 163 187
Mallory v. Bird	- 177
Maffa v. Dawling	- 178
Moore v. Battie	- 185
Mason v. Abdy	- 192
Maund's Cafe	- 239
Mingie's Cafe	- 243
Mortimer v. Capper	- 280
Middleton et Uxor v. Croft	- 298
Miller v. Race	- 376
Meres v. Anfue	- 422

## N

Nevison v. Whilley	- 201
	6 Nasie's

	Page
Nasie's Cafe	222
Nevil's Cafe	228 289
Nichols v. Goulde	278 280
O	
Oliver v. Oliver	39 137 161
Oxford's Earl of Cafe	219
Oliver v. Enfonne	288
P	
Polwarth Lord and Cooke	170
Pratt v. Willey	171
Plumbe v. Carter	174
Pollard v. Scholy	196
Prefcot's Cafe	201
Portmore Lord v. Morris	422
Preston v. Merceau	422
Q	
The Queen v. Dy	157
Ditto v. Sewel <i>alias</i> Beaus	219
R	
Roberts v. Tremayne	185-7 192 265
Richards v. Brown	193
Roberts v. Tremoile	221
Rex v. Galt or Garth	221
Ditto v. Thurston	355
Ditto v. Call	355
Rumball v. Murray	357 373-7-8 404
Rosher v. Hurdie	361
Robinson and Bland	436
S	
Saunderfon v. Warner	81 140 160-1 211
Sharpley v. Hurrell	188
	Spurrier

# LIST OF CASES.

rim

	Page
Spurrier v. Mayoſs	- 196
Stapleton v. Conway	- 203-6
Scott and Neſbitt	- 204
Scott qui tam v. Breſt	- 222
Stafford the Earl of v. Buckley	- 245
Symmonds v. Cockrill	- 262
Stanhope Sir William v. Cope and Roberts executors of Spinks	- 262 276
Spratley v. Griffith	- 280
Stephens v. Bateman	- 280
Stone v. Litterdale and others	- 289 295-6
Stuart v. Tucker	- 291-3-5 433
Spencer v. Cox and Drummond	- 293
Stradling v. Morgan	- 325
Saunders v. Hardinge	- 361 396 409 412
Sherfon v. Oxlade	- 362
Sowerby v. Harris	- 376-8
Shove and Webb	- 381 438 440-1-3-4-5-6 447-8
Symmonds v. Mortimer	- 382 416
Sawyer v. Bunce	- 383
Steadman v. Purchase	- 383
Straton v. Raſtall and others	- 440-1-3-4-5
Shrapnel v. Vernon	- 453

## T

Tanfield v. Finch	- 176 362
Tate v. Williams	- 181
Tomkyns v. Barnet	- 215
Twisleton v. Griffiths	- 283
Toldervy and Allan	- 369 370-1
Thurkill v. Wallace	- 424

## W

Walker v. Penry	- 176
Wicke's Cafe	- 176

Winch



LIST OF CASES.

	Page
Winch qui tam v. Fenn	- 180
Sir Thomas Wroth's	- 236 289
Wood v. Fenwick	- 278 280
Willis v. Tomegan	- 279
Walwyn v. Auberry and others	- 307-9-11
Willion v. Berkeley	- 325
Wright v. Reede	- 375
Watts v. Millard	- 380 408
Washburn v. Birch	- 381
Willey v. Wheeler	- 395

Y

Yeoman v. Barflow	- 205
Yates v. Elliot	- 293

ERRATA.

- Page 75. line 6 between the words *qui* and *voluerint* insert *sequi*.
134. 12 for 13<sup>th</sup> read 37<sup>th</sup>.
142. ult. for XVIII read XIX.
305. 2 for *estates* read *uses*.
335. 11 for *latter* read *letter*.
341. 4 omit the words *be expressed*.
436. ult. for 139 read 239.
449. 3 instead of *having*, read *and that he has*.
- 5 instead of *having* read *has*.
- 26 after *secure* read *it*.

---

## INTRODUCTION.

---

THE subject of the following sheets affects so many persons of various descriptions, that no apology is requisite for introducing it to the notice of the public. A free and extensive circulation of property necessarily creates advantages to the possessors of it, that fluctuate and vary with the losses, wants, and distresses, of those who possess it not. In the imperfect state of corrupt mankind, it is beyond the power of legislators to direct or control the feelings of individuals in such a manner, as to punish the mere omissions of acts of philanthropy. Something however of this nature has been attempted by our legislature in prohibiting what it calls *Usury*; which it has declared or made an offence of so deep an hue as to have engaged the prepossessions of most men,

Reasons of  
the publica-  
tion.

B

and

Difficulty of  
handling the  
subject with-  
out offence.

and directed the passions of many against it. Where on one hand a numerous class either through misfortune or folly have been brought to the painful necessity of raising money upon hard terms, and on the other hand a small number of men reap profit and advantage from the disastrous circumstances of their fellow-creatures, it will be hardly possible to treat the subject at all without displeasing or offending either one set or the other. For a subject productive of such desperate effects will be rarely viewed, but through the medium of extreme prejudice. It is unquestionable, that the law of England as founded in the law of nature ever has discountenanced, repressed and punished every species of hardship oppression and extortion in money transactions: but it is scarcely warrantable to assert, that these offences can be fairly compressed into the frequently uttered, but seldom thoroughly understood term of *Usury*. That all distressed men hold *Usury* in abhorrence may be readily granted: that many opulent men cry down in public, what they practise and support in private may be easily proved. And were the legislature to call



## INTRODUCTION.

3

for declarations of trust upon all sums of money now actually lent out upon hard and oppressive, if not *usurious* terms, they would develop many additional and powerful motives for bringing the subject under the eye of the public <sup>1</sup>.

It would be censurable, in defiance of the most formal acts of the legislature, to presume to reprobate the restraints raised by the laws against all exorbitancy of demand in pecuniary loans and advancements. As therefore I confine myself to the mere question, where these restraints begin and where they end : in other words, *What is and what is not Usury*, I consequently suppress many observations, which forcibly affected my

Scheme of  
the work.

<sup>1</sup> I am much encouraged in my pursuit of this object by reflecting, that it once engaged the most brilliant talents of the English bar. Mr. Erskine in 1776 published his reflections on gaming annuities and usurious contracts. His penetration discovered the extent of the evil, and his truly public spirit broke forth into that admirable flame of eloquence, in which he warned his countrymen against it. "A gamester," (says he p. 14.) "without his Jew is this lamp without oil, this ship without water. If the money could not be had in the instant by the sale of annuities, or by usurious contracts, the fit would go off, reason would return : and little mischief is done, where the present is only lost, and the future remains unanticipated."

B 2

mind

Mr. Bentham's Defence of Usury.

mind in reading the ingenious Mr. Bentham's Defence of Usury <sup>1</sup>. The substratum of his reasoning upon the subject is the assumed *right of man* to dispose, as he pleases, of his own property. It appears moreover a specious argument, that no man is compellable to lend his money: and no one will apply for it, but he, who wants it: the borrower therefore receives a benefit, not an injury, who by the loan procures a supply in his most urgent necessities. In civilized society this reasoning appears too broad <sup>2</sup>.

Property the creature of the state.

*Property* of every denomination in it's origin and in all it's proximate and remote effects is emphatically the creature of the sovereign power. The sole duty of the civil magistrate is the superintendence of the peace and welfare of that community, which delegated to him his power and trust. Wherever the disposition of property can affect the peace and welfare of the community,

<sup>1</sup> Defence of Usury, shewing the impolicy of the present legal restraints on the terms of pecuniary bargains, &c. by Jeremy Bentham of Lincoln's Inn, Esq.

<sup>2</sup> By this I mean permanent and circulating property: and not such as perhaps might have been acquired in a state of nature by actual occupancy and mere manual industry or labour.

there

there all claims and rights of individuals upon that property yield to the transcendent right of the civil magistrate to model and dispose of it for the good of the community in that manner, which to him shall appear most expedient. Upon these principles are formed all laws, which affect the disposition of property by way of acquisition, alienation or loan. It is because property is essentially the creature of the supreme civil power, that no individual in any state can acquire it, but by virtue of the laws of that state, to which he is subject, alienate it but in the manner and to the persons and under the conditions, which the laws of the state allow of, or lend it but upon the terms, which they prescribe.

With reference to the general abstracted import of the term *Usury* in the English law, I readily accord with the learned defender of *Usury*, that in the original and known acceptation of the word, *Usury* is not of itself immoral or sinful (I speak not of oppression or extortion); that is, it neither counteracts the law of nature, nor is it prohibited by the revealed law of christianity. Independently therefore of any municipal restraining law,

*Usury not  
in itself sin-  
ful.*



## INTRODUCTION.

it is unquestionably true, that every individual possessing money is at full liberty to make what advantage he can of it without injuring his neighbour. This general social right is precisely such, as the sovereign civil power can at all times control. For if Ufury, or the taking of any advantage or profit for the loan or forbearance of money militated against the law of nature or christian revelation, the legislative power of any state could not add to the conscientious immorality of committing what, in that case would be the *crime*, whatever penal restrictions and punishments they might impose upon the delinquent. But the most infatuated devotee to the *civil power* has never even pretended to allow it the right of sanctioning in any degree an act, which even obliquely clashes with the laws of nature and grace. It is undeniable, that the sovereign *civil* power can only exercise its control over those acts of man, in the performance of which the laws of nature and the gospel have left him indifferent and free. It follows then as a corollary, that the supreme civil power of each state can alone regulate and fix the possession value  
security

## INTRODUCTION.

7

security loan tranfer and circulation of money throughout it's jurisdiction.

It rarely happens; that a lender of money openly takes more than the legal interest upon the loan. Many however have been the devices of Usurers to evade the force and effects of the laws against Usury; and these it will be requisite to look into. But the traffic of buying and selling annuities is so fatally prevalent, that there are few landed estates now under settlement in this country, which are not liable to some such incumbrance. Now the raising of money by the sale of annuities for the lives of the grantors is a species of loan or accommodation of money bringing to the lender, or to him who advances the money, a much larger profit, than 5 per cent. which he is allowed by law to make of it; and Mr. Erskine therefore justly calls them (p. 24.) *Evasions of the Statute of Usury*. But "*Annuities*," continues he (p. 26.) "for the life of the  
"seller, which are far the more common,  
"and for which seldom more than six years  
"purchase is given, cannot be defended on  
"any principle of public utility or social

Fatal prevalence of the traffic of annuities.

“ advantage: and common sense will in-  
“ form the most simple apprehension, that  
“ every contract, which cannot rest itself  
“ on one or other of these principles, must  
“ be dishonest unjust and destructive of  
“ the spirit of every human intercourse,  
“ which is general and reciprocal benefits.”

---



PART I.

OF USURY.



---

# PART I.

---

## CHAP. I.

### OF USURY IN GENERAL.

#### CONTENTS.

*He got. R.<sup>d</sup>  
d. War & Peace  
Basil. W. L. 6.  
2. Ch. 2. 1. 26.  
d. the Hon. J. Law of  
Mortgage  
Ed. 6. 5.  
2. 7. 1. 6.  
to 12.*

Prejudices against Usury—Nature of Usury—  
Jewish Usury—Opinion of Divines the Source of  
our Common Law of Usury—Difference between  
Practice and Opinion—What Jewish Usury was  
as to it's Nature and Obligation—The Texts of  
the Old and New Testament shortly considered—  
Opinions of some of the Greek and Latin Fa-  
thers against Usury—Opinions of the Divines of  
the Reformed Churches—St. Thomas Aquinas  
and Calvin agree in it's Lawfulness—Horror of  
Usury in the Reigns of Elizabeth and James—  
Chinese Interest at 30 per Cent. allowed of—  
Papal Condemnations of Usury—Bishop of Dur-  
ham in the 13th Century commanded to pay  
Interest by the Pope—Brief of Benedict XIV  
against Usury—General Obligation of Philan-  
thropy



*thropy—Whether the Borrower be Particeps  
Criminis—Nature of Property in general—  
Difference of the Spiritual and Temporal Powers  
—True Sense of the Usury spoken of by most of  
the Fathers.*

PART I.  
CHAP. I.

Prejudices  
against  
Usury.

SUCH have at all times been the general pre-  
possessions against Usury and Usurers, that it is  
scarcely possible to speak temperately upon the  
subject without giving scandal or offence to a  
large portion of mankind. If we form our  
opinion of Usury upon the general doctrine of  
divines, or the rigorous severity with which  
legislators have generally punished the Usurer,  
we shall necessarily place it at the head of the  
foulest table of offences against God and man.  
Usury has almost in every age and every civi-  
lized country been the invariable theme of  
censure to the moralist, of persecution to the  
statesman, of eternal reprobation to the divine.  
The investigation of it's nature and effects  
must therefore be proportionably candid and  
unbiaſſed, as the sentiments and feelings of  
mankind have by prevention been worked up  
to the execration of it's turpitude, by a combi-  
nation of all the means, which most powerfully  
operate upon mind and conscience.

General  
Nature of  
Usury.

The original and most extensive import of  
the word *Usury* means the letting out or lend-  
ing of one's property to others for hire gain  
profit

profit or reward : under this sense or acceptance of the term were the ideas of *Usury* conceived, which have been entertained and handed down in succession from the earliest periods of christianity to the present century. The christian horror of the crime of *Usury* evidently appears to have been engrafted upon the stock of the Mosaic prohibition. Of the surprising bearing of this prolific scion from theological culture, I shall speak more explicitly hereafter. The law of Moses was a compound of *spiritual* and *civil* government, which rendered many of it's injunctions inapplicable to or inexpedient and mischievous in any other state, where the same alliance between church and state did not exist. The Mosaic system was not framed for perpetuity like that of Christianity. The whole had been fulfilled and was put an end to, when our divine Redeemer expired upon the cross. From that time no part of the Jewish law, which was not obligatory upon all mankind before it was delivered to Moses, continued to be binding on the conscience of any human individual ; unless perhaps upon such of the Jewish nation, as continued that civil form of government, to which the Mosaic rites ceremonies and ordinances were adapted.

Difference  
of Christian  
and Mosaic  
institutions.

There has been some, though not very general difference between the schoolmen about that

PART I.  
CHAP. I.Jewish  
Usury.

that Usury, which was prohibited by the law of Moses. In Deut. xxiii. 19. 20. God expressly forbids his people to lend money, victuals, or any thing else to their Jewish brethren upon Usury, though he allow them to make such loans to strangers: but enjoins them to lend to their brethren whatever they want without Usury, i. e. without any profit gain or reward. (Exod. xxii. 25.) He forewarns the Jews, when they lend money to any poor, that dwell amongst them, not to be hard upon them as extortioners nor oppress them with Usury. And again (Lev. xxv. 36. 37.) he expressly prohibits Usury for money or any encrease for victuals: he commands his people not to take more, than they gave. It appears then to have always been the more common opinion, that the Jewish law permitted no degree of Usury whatsoever amongst their countrymen or fellow citizens: that it was sinful in any Jew to take even the most moderate Interest for the money he lent to another Jew. The distinction therefore, which probably exists in the mind of most Englishmen at this day, between lawful and unlawful Interest (or Usury) from it's rate could not have existed amongst the Jews, whilst they were subject to the laws of Moses. On the other hand they had a distinction between lawful and unlawful Usury wholly unknown to us; that



that is, of Interest or Usury arising out of a loan to an alien, which would not have arisen out of a loan to a native. They were not flinted by law to any particular rate of the Interest, which they were allowed to take from the alien. We, who are by law allowed to take a certain rate of Interest or Usury, cannot exceed it any more in negotiating with the alien, than with our native countryman. A mere loan then at Interest or upon Usury appears not from it's nature criminal or sinful before God. The act becomes lawful or unlawful only by the positive institution of particular municipal laws. What is of it's own nature sinful or unjust the civil magistrate can neither palliate nor sanction. Acts of injustice and sin change not their nature, but only the degree of guilt by the *plus* or the *minus*. To whatever excess they run, they retain their essential quality of sin and guilt. The robbery of one shilling or of a thousand pounds is the same species of injustice to my neighbour and offence to God: it equally requires atonement by restitution to my neighbour and repentance to the Almighty. So said the most inveterate enemy of Usury, Dr. Wilson<sup>1</sup>: "There is no mean in this vice, more than there is in mur-

PART I.  
CHAP. I.

Difference  
of Usury  
amongst the  
Jews and  
ourselves.

<sup>1</sup> A Discourse upon Usurie by waie of dialogue, by Thomas Wilton, D. C. L. &c. 1584.

"der

PART I.  
CHAP. I.

Our Com-  
mon Law  
arises out  
of the pre-  
possession  
of our ances-  
tors.

“ der theft or whoredom. And therefore I say  
“ and maintaine it constantlie that all lending  
“ in respect of time, for anie gaine, be it ever  
“ so little is Ufurie, and so wickednesse before  
“ God and man and a damnable deed in itself.”

It may at first appear irrelevant to the discus-  
sion of a point of English law, to take under  
our consideration the opinions and sentiments  
of other writers, than those upon the laws of  
England: but when we reflect, that our com-  
mon law, which is nothing else, than immemo-  
rial usage, must from its nature have originated  
from the commonly-received opinions sentiments  
and even prejudices of our ancestors, it may not  
be deemed foreign from our purpose to trace to  
it's source the general prepossession of mankind  
against Usury; by which we shall account for the  
*common* and *statute* laws of England concerning  
it. I shall not attempt to notice the extravagant  
conceits of those, who have argued against the  
moral lawfulness of Usury from the natural  
sterility of money, which has not been gifted by  
the God of nature with genitive or procreative  
faculties. Many other eccentricities equally  
wild and absurd have surcharged the heavy folios  
of civilian canonical and theological writers upon  
Usury. As however for many centuries the whole  
christian world was in a manner influenced and  
directed by the clergy, who had monopolized all  
learning

learning within their own body<sup>1</sup>, it was natural that general submission should be paid by the ignorant to the opinions propagated by the learned. It may then be truly said, until the present century, to have been the *communis opinio theologorum*, that every species of Usury is palpably unjust in it's nature and a grievous offence against the law of God and man, <sup>2</sup> *quod planè iniquum est et grave peccatum contra jus humanum et divinum*. The definition of Usury, from which this damnatory sentence is deduced, goes to every possible profit or advantage made by a loan. <sup>3</sup> *Est lucrum immediatè prov. niens ex mutuo*. In the like spirit and under the like impression has Usury, down to the days of Elizabeth, been always treated by parliament as a horrible vice and as sin and detestable to God. Now it is evident that no human legislature whatever can in any degree countenance sanction or authorize, that which has the nature of sin and is of course detestable to God.

PART I.  
CHAP. I.

Theological  
Censure of  
Usury.

<sup>1</sup> I read with indignation the bitter invectives of some modern authors against the monks and clergy of past ages. Every lover and promoter of learning, should be loud in expressing his grateful admiration of that body of men, to whose industry and labours we owe the transmission of many grounds of that knowledge and science, which we now possess.

<sup>2</sup> Theol. Moral. LaCroix. Tom. III. L. iii. Par. 2. De Usurâ.

<sup>3</sup> Ibidem.

It



PART I.  
CHAP. I.

Difference  
between  
theory and  
practice.

It is obvious that where opinions are so rigorously severe in the condemnation of a practice, which universally prevails with all ranks and descriptions of persons, from the heedless latitudinarian to the strictest moralist, the subject calls for strong *eclaircissement*. Who against the universal practice of every civilized nation, will condemn the receiver of any profit or advantage for giving time of payment of a *horrible vice and sin contra jus humanum et divinum?* for according to that doctrine; such receipt constitutes the crime of Usury. No subject within the scope of ethics ever displayed so glaring a discrepancy of theory and practice as Usury. This escaped not the observation of the thoughtful La Bruyere<sup>1</sup>. “*Il y a depuis long-temps dans le monde une maniere de faire valoir son bien, qui continue toujours d’être pratiquée par d’honnêtes gens, et d’être condamnée par d’habiles docteurs.*” He might perhaps without offending truth have united the practice of the honest man and the condemnation of the learned doctor in the same individual. The alternate inference however is truly serious. Either the error is taught by learned divines, or injustice is practised by honest men. Highly beneficial will it be for society to remove the indecision upon so important a subject, that puts in hazard the salvation or the fortune of so many. My view is

<sup>1</sup> De Diverses Usages.

to ascertain the nature of that Usury, which was the real object of the censures and invectives of the first fathers of the church and of some more modern divines: and to shew that an inconsiderate, though zealously intended extension of the word *Usury* has been productive of this melancholy variance between the usage and doctrines of the most serious and respectable part of christianity. It was a constant complaint of all the most violent declaimers against Usury, that when the distemper was supposed to be at it's acme, the prevalence of the usage wore off in a great measure the turpitude and foulness of the crime. To prove which Dr. Wilson<sup>1</sup> quotes what Seneca said (*de benef. l. 3.*) *Pudorem rei tollit multitudo peccantium et definit esse loco peccati commune malefactum.* Et alibi: *Cessare publica jura peccatis et caput licitum esse quod publicum est.* Generality of practice is no justification of the rectitude of an usage: but it is so strong a presumption in favour of it, as to impose a most serious duty upon those, who undertake the discussion of the usage, not hastily to condemn it as immoral or sinful either in it's nature or tendency.

There is something so awful in the appeal to scriptural authority, that no caution and reverence can be too great either in adducing or re-

<sup>1</sup> Wils. of Usurie, 172.

PART I.  
CHAP. I.

Whether  
the prohibi-  
tion of Ufu-  
ry be of uni-  
versal moral  
obligation.

jecting it. For amongst Christians this can be attempted upon no other ground, than that of it's inapplicability to the subject. The law of Moses certainly contained a prohibition to the Jews to lend upon Usury or at Interest to one another, and expressly allowed them to take Interest or Usury from a stranger. This difference between the Jew and the Gentile affords internal evidence, that the prohibition was not a law of indispensable and universal moral obligation. If it had been so, it would have obliged all mankind as well as the Jews. Now if the taking of Usury were absolutely against any of the commandments or those moral precepts, which pre-existed and survived the Mosaic legislation, it must be against the law of nature, which God has implanted in the breast of every rational creature, and which may be therefore known by the mere light of reason. <sup>1</sup> *For when the Gentiles, which have not the law do by nature the things contained in the law, these having not the law are a law unto themselves; who shew the work of the law written in their hearts.* If the taking of Interest or Usury upon a loan were of itself evil and prohibited *quia malum in se*; it could not have ever been allowed of under any circumstances whatsoever. It appears therefore evident, that the strangers, to whom God

<sup>1</sup> Rom. ii. 14. 15.

permitted



permitted loans to be made on Usury, were generally all persons, with whom the Jews could have any intercourse or commerce for their mutual advantage; and not as Sir Edward Coke<sup>1</sup> observes, *because it was a mean either to exterminate or depauperate them, as they should not be able to invade or injure God's people.* St. Ambrose has also viewed the ground of this prohibition in the same point of view, alleging, that God only permitted his people to practise Usury against their enemies whom he had commissioned them to destroy.<sup>2</sup> “There says he, take Usury, whom  
 “you may lawfully wish to hurt, against whom  
 “you justly bear arms, from them you may legally demand Usury. Whom you cannot subdue in the field, you may soon distress and  
 “avenge yourselves of by Usury. Take  
 “Usury from him, whom you may lawfully  
 “kill. Wherever therefore you have a right to  
 “wage war, you have a right to take Usury.”  
*Ab hoc Usuram exige, quem non sit crimen occidere.*  
*Ergo ubi jus belli ibi etiam jus Usuræ.*

*That is,  
 with his  
 sword, &c.  
 as appears  
 by the quo-  
 tations.*

It is clear from other texts in holy writ, that this permission to take Usury from strangers, was not a mere instrument of vengeance and destruction confided to his chosen people by the Sovereign of the universe for exterminating their

What Jew-  
 ists Usury  
 from Scrip-  
 ture.

<sup>1</sup> 3 Inst. 151.

<sup>2</sup> Lib. de Tob. c. 15. Vid. also Dr. Wilton, fol. 23, who quotes part of this passage.

PART I.  
CHAP. I.

enemies. On the contrary it was a temporal and permanent advantage, which God held out as a reward to his people to allure them to the observance of his law. (Deut. xv. 6.) “For the Lord thy God bleſſeth thee, as he promised thee; and thou shalt *lend unto many nations*, but thou shalt not borrow.” Can the enjoyment of an act immoral in it’s nature be the reward, which God annexed to the observance of his commandments? And if these loans, which were to be made to foreign nations were without interest or not made upon Usury as some have argued, then the whole advantage would have been on the side of the borrowers, and such loans made by the Hebrews would have been a loss and detriment and not a reward. This is confirmed by the repetition of the reward. (c. xxviii. v. 12.) *And thou shalt lend unto many nations and thou shalt not borrow*: and by inverting the promise into a curse. (v. 44.) *He shall lend unto thee and thou shalt not lend unto him: he shall be the head and thou the tail*. These contrary blessings and curses can only be explained by loans at Interest or upon Usury.

Whether  
Usury con-  
fined in the  
concession of  
the poor.

It would exceed the bounds of my intentions to enter fully into the question, whether the Jewish prohibition to lend at Interest or upon Usury were or were not confined to the poor and the

the distressed? <sup>1</sup> Many very respectable divines are of opinion, that a loan could under the Mosaic law have been lawfully made at interest from one Jew to another, to enable the borrower to traffic, purchase land or for any such purposes : and that the offence, which constituted the breach of the law consisted formally in superadding to the difficulties and miseries of the needy and distressed borrowers. So that, where there was no hardship or oppression, there could be no sin of Usury even under the law of Moses. Several passages in the Scripture seem to support this opinion : and almost all the invectives of the fathers press upon the enormity of the sin of Usury on account of the oppression cruelty and inhumanity thereby exercised upon the *poor*. (Exod. xxii. v. 25) “ If thou lend  
“ money to any of my people that *is poor* by  
“ thee thou shalt not be to him as an Usurer,  
“ neither shalt thou lay upon him Usury.”  
(Lev. xxv. v. 36. 37.) “ And if thy brother  
“ be waxen poor, and fallen in decay with  
“ thee; then thou shalt relieve him ; yea though  
“ he be a stranger or a sojourner : that he may

<sup>1</sup> This subject is very learnedly and ably treated in a work in 4 vols. 12mo. printed at Amsterdam, 1759, intituled, “ Traité des prêts de commerce ou de l’interêt légitime et illégitime de l’argent ; par M . . . . Docteur de la Faculté de Théologie de Paris.”



## PART I.

## CHAP. I.

“ live with thee, take thou *no Usury* of him or  
 “ encrease, but fear thy God, that thy brother  
 “ may live with thee. Thou shalt not give him  
 “ thy money upon Usury, nor lend him thy vic-  
 “ tuals for encrease.” Very little impartial re-

flexion upon the invectives of the fathers will convince us, that the Usury, which was the object of their censure and detestation was always an act of oppression or extortion. Thus exclaimed St. Hilary : *‘ Memento eum a quo Usuram repetis esse inopem et pauperem, propter quem inops et pauper voluit esse Christus :* nor could he have said this, unless he had confined the offence to the advantage taken by the Usurer of the indigent and poor. But in the supposition, that the actual taking of any interest or encrease whatever by one Jew from another, where there was no oppression or hardship were forbidden by the old law, yet as the law was but partial local and temporary, there is no pretext whatever for extending the inhibition to the christian code, the source basis and end of which is universality, that excludes every idea of foreigner or alien. Since however the common law of England is grounded in immemorial usage, and such usage must have arisen out of the notions doctrines and dispositions of our ancestors I shall continue in confidence the present pursuit.

<sup>1</sup> St. Hil. in Psalm xiv. -

As the most violent enemies of Usury chiefly confine themselves to the scriptural prohibitions in the Old Testament, it will be proper, but to speak briefly of the two only passages in the New, which by some persons have been tortured into absolute prohibitions to take or receive any interest whatsoever upon the loan of money. The first is (Mat. v. 42.) *Give to him, that asketh thee, and from him that would borrow of thee turn not thou away.* The other is, (Luke vi. 35.) *But love ye your enemies and lend, hoping for nothing again, and your reward shall be great.* The judicious and profound author of the *Traité des prêts de commerce*<sup>1</sup>, proves in the most satisfactory and conclusive manner, that these two passages make but one and the same recommendation of an evangelical council; or rather that they re-

PART I.  
CHAP. I.

Whether  
Usury pro-  
hibited in  
the New  
Testament.

<sup>1</sup> 1 Vol. 2 Partie, Ch. 4. He remarks a common error that seems to have prevailed in most modern versions of the Bible that have followed the Vulgate (as in this instance both the English and Rhemish have) in this passage of *nihil inde sperantes*. He observes, that in the more antient Greek copies it is; *δανίζεσθαι μὴ ἀποπληροῦναι*: he himself renders it, *neminem desperare facientes*. The Latin translator from the Syriac text gives it; *Mutuum date, neque frustratis expectationem ullius*: from the Arabic; *Mutuum date, et ne fraudetis spem ullius*: from the Persian; *Mutuo illis detis, et ne quempiam desperandum faciatis*. This sense certainly appears more congenial with the spirit and context of the passage and to the literal acceptation of the Greek words, than by rendering *μὴ ἀποπληροῦναι*, *nihil inde sperantes*.

PART I.  
CHAP. I.

fer to that general precept of humanity and charity, which though obligatory upon the consciences of individuals, never can be so reduced to certain acts or occasions, that can be brought under the control or coercion of the civil magistrate. Our blessed Lord clearly speaks of lending to the poor: and he draws the line between acts done out of human respects or worldly and natural motives, and which receive their reward here, and those which are done for the sake of heaven and which will be rewarded in another life. But it follows not, because an act will not be rewarded in heaven, that therefore it is prohibited to be done upon earth. No man will pretend, that it is sinful to lend money to a rich friend, who will repay it, or to invite relatives or such acquaintance to one's house, from whom we expect a return of invitation. Yet our divine Teacher here instructs us, in what instances the perfection of his doctrine exceeds the common benevolence of mankind, holding up to us the ladder of evangelical perfection, by which we may ascend to that *reward*, which he tells us is *great*. The conclusive words, *Be ye therefore merciful, as your Father also is merciful*, clearly demonstrate, that the discourse turned only upon loans to the poor and needy; for to lend to the rich or to him that could repay with interest would be no act of mercy: *for sinners also*



*also do even the same.* Now as by the law of Moses Usury was allowed to be taken of all foreigners, it was evidently no prohibition of an act, which by the light of nature was known to be evil: for it is impossible by the mere light of reason to know, that to take or receive moderate interest for the loan of money, where there is no oppression but favour and benefit in the loan, is against the great law of nature, which God has implanted in the hearts of his creatures. It was wisely said by a respectable divine<sup>1</sup>, “that the law of God is clear and evident at least “in all that concerns it’s morality: and consequently reason alone can discover the justice “and equity of the precepts.” Every species of oppression and extortion upon the poor and distressed directly militates against this law of nature; and therefore such acts are prohibited by our blessed Lord in the new law: for it is generally admitted by divines of all schools, “that “our divine Redeemer only renewed and imposed upon us (Christians) those precepts of “the old law, which are founded in the law of “nature<sup>2</sup>.”

Although it appear to have been conclusively

<sup>1</sup> Le P. Thorentin. *L’Usure expliquée et condamnée.* ch. 5.

<sup>2</sup> Certum est ex legis præceptis ea tantum a Christo renovata esse ac nobis imposita, quæ ad ipsam naturæ jus pertinerent. *Dogma Ecclesiæ circa Usuram. Sæd. 3. prop. 2. p. 462.*

proved

PART I.  
CHAP. I.

Opinions of  
the fathers  
and school-  
men not ex-  
plicit as to  
the nature of  
Usury.

proved by the unbiaſſed and learned doctor in his treatiſe of commercial loans, that the paſſages in the New Teſtament, the decrees of the Councils, and the opinions of moſt of the Fathers upon Uſury, refer only to that Uſury, which oppreſſes and aggrieves the poor and diſtreſſed; yet as ſome of the fathers in the heat of their zeal, and the generality of ſchoolmen in the con- fuſion of their refinements, have extended the nature of the offence to the taking even of the moſt moderate encreaſe for the loan of money from any perſon, however profitable and conve- nient it may be to him to pay it, there is no wonder, that by this change of the very ſtate of the queſtion, the whole chriſtian world was kept for centuries in embarraſſment and perplexity, by reſpectable caſuiſts condemning in theory, what the ſtricteſt moraliſts continued to praſtiſe. Upon the whole, as to this prohibitory law of Moſes, ſuffice it to ſay with archdeacon Paley †, “ This prohibition is now generally underſtood “ to have been intended for the Jews alone, as “ part of the civil or political law of that na- “ tion.” So general however and ſo violent were the inveſtives of the fathers and doctors againſt Uſury, without always ſpecifying in what the offence conſiſted, that by general concur- rence every nation in chriſtendom prohibited

† Principles of Moral and Polit. Philoſ. 1 V. c. x.

and punished it, as an offence against natural justice and moral rectitude. When I reflect on the close connection, that has always existed in this country between the church and state, I readily trace most of our laws upon subjects of this nature to the influence, which the clerical part of our early legislators possessed over the laical. Allowing therefore, that the opinions of the clergy upon a subject of this nature must at all times have produced a very powerful effect upon the different communities of which they made a part, I shall endeavour to shew the continuance of these opinions as nearly up to our own times as possible, and mark the effects they seem to have produced upon the municipal laws of the different states, in which they have been adopted.

It would be an endless and unserviceable task to quote all the different passages from the fathers and canonists against the practice of Usury: some few will suffice to prove the prevalence of the general execration, in which the crime was holden. The guilt seems to be by them invariably grounded upon the poverty and distress of the borrower: for they generally admit, that every act, by which one human being takes advantage of another's distress or indigence, is a direct violation of that spirit of benevolence, with which God has cemented the social system of mankind, and for that end has infused it into the breast of

PART I.  
CHAP. I.

Opinions of  
the Greek  
fathers.



PART I.  
CHAP. I.

of each individual. Both the Greek and Latin fathers are equally vehement in their invectives against Usury. Not one of them has been more explicit and violent than St. Basil; he has collected and collated all the passages of the Scriptures upon the subject: and he enters so minutely into the arts and practices of the usurious money-jobbers of his time, that one would rather have presumed his account had been written in London at the close of the 18th, than at Cæsarea or Constantinople in the 4th century<sup>1</sup>. “The griping usurer,” says he, “sees unmoved  
“his necessitous borrower at his feet, condescending to every humiliation, professing every thing  
“that is vilifying. He feels no compassion for  
“his fellow-creature, though reduced to this  
“abject state of supplication: he yields not to  
“his humble prayer: he is inexorable to his  
“entreaties: he melts not at his tears; he holds  
“out obdurate in his refusal. He swears and  
“protests that he has no money, and that he is  
“under the necessity of borrowing himself. He  
“acquires credit to his lies by superadding an  
“oath, and aggravates his inhuman and iniquitous traffic with the grossest perjury. But when  
“the wretched suppliant enters upon the terms  
“of the loan, and holds out the advantages of  
“their exorbitancy, his countenance is changed

<sup>1</sup> In Psalm xiv.

“ and

“and he smiles complacency. He reminds him  
 “of his intimacy with his father, and treats him  
 “with the most flattering cordiality. ‘Let me  
 “see,’ says he, ‘if I have not some little cash in  
 “store: for I ought to have some belonging to  
 “a friend who lent it to me upon very hard  
 “terms, to whom I pay most exorbitant  
 “interest for it: but I shall not demand any  
 “thing like that from you.’ By fair words and  
 “promises he seduces and completely entangles  
 “him in his snares: he then gets his hand to  
 “paper and completes his wretchedness. How  
 “so? By dismissing him bereft of his liberty.”  
 Is this an ancient or a modern “picture?  
 “‘Take Solomon’s rule,” says this same father,  
 to the deluded and abjected borrower, “drink  
 “of the water of thine own well. Sell thy cat-  
 “tle, thy plate, thy household stuff, thine appa-  
 “rel: sell any thing rather than thy liberty:  
 “never fall under the slavery of that monster  
 “Usury.” Then after a very studied and elab-  
 orate description of the unnatural and un-  
 ceasing fertility of money placed out at Usury,  
 brought and bringing forth on the same day,  
 he closes his invective by addressing to Usurers  
 the coarse and harsh terms of *dogs monsters vi-  
 pers and devils*. St. Basil’s brother St. Gre-  
 gory Nyssen and his friend and schoolfellow St.

\* Bas. Supplem. in 25 Psalm.

## PART I.

## CHAP. I.

Opinions of  
the Latin  
fathers.

Gregory Nazianzen and all the other Greek fathers hold very similar language.

The Latin fathers are no less vehement in their execrations of Usury. St. Ambrose has written perhaps more fully upon the subject, than any other; but he is peculiarly explicit in grounding the guilt of the offence in the cruelty of the Usurer in not succouring his distressed fellow-creature according to the law and call of humanity. <sup>1</sup> *Cum contra naturæ legem sit non juvare.* St. Augustine is not less violent against Usurers than St. Ambrose; and he shews, that he meant no other than oppressive Usury, which must always be contrary to the laws and spirit of natural equity and humanity.

The same holy father <sup>2</sup> replies to the common excuses for taking Interest for money lent in this bitter and pointed manner. “Usurers dare say they have no other means of livelyhood, than the produce of their money. So may the robber reply, when taken in his lurking hole: So may the house-breaker say, when taken in the act of burglary: *hoc mihi et leno diceret emens puellas ad prostitutionem.*” In a word he elsewhere asserts, <sup>3</sup> that Usurers belong not to the church of God. To approach nearer to our own times, Leo the Great is not less violent

<sup>1</sup> Offic. lib. iii. c. 3.

<sup>2</sup> In Psalm cxxviii.

<sup>3</sup> Ad Maced. et habet 14 q. 4 Cantic. Quid dicam?

against



against Usury; and he sums up a very pointed execration of the crime in these emphatic words,

<sup>1</sup> *Quoniam fœnus pecuniæ funus animæ.* After his time again St. Bernard could not excite a greater horror of Usury, than by declaring Usurers worse than Jews, and calling them baptized Jews. <sup>2</sup> *Pisus judaizare dolemus Christianos fœneratores. Si tamen Christianos et non magis baptizatos Judæos convenit appellare.* With such a weight of authority it is little surprising that succeeding divines should emulate each other in the bitterness of their invectives against Usurers. <sup>3</sup> *Fœnerator, says Peter of Blois, tristissimos habet exitus hujus vitæ cujus mors detestabilis, cujus finis interritus, cujus damnatio sine fine.*

Decrees of  
Councils.

In the Lateran council when Panormitan Archbishop proposed the question whether Usury might not be dispensed with for the redemption of captives, Pope Alexander III. answered in the negative, for this reason: <sup>4</sup> *Quod cum usurarum crimen utriusque testamenti paginâ detestatur, super hoc dispensationem aliquam non vidimus admittendam.* And in the same council it was decreed, that manifest Usurers should be deprived of the communion and fellowship of

<sup>1</sup> De Jejunio 10 Mensis Sermo 6.

<sup>2</sup> Epist. 322. ad Spirenses.

<sup>3</sup> Epist. 131.

<sup>4</sup> Can. I.

christians

PART I.  
CHAP. I.

Progress of  
Usury.

christians in their life and of christian burial after death, till their heirs had restored their Usury. The council of Vienna under Clement V. condemned all as heretics, who held Usury to be lawful.

For the greater part of the time during which the authors I have quoted wrote, Usury was not very general: and the few, who practised it were shunned pointed at and abhorred as connected with the devil: their houses and property were usually called the devil's house, the devil's field, the devil's vineyard, &c. For before the extension of commerce, which the discovery of the western world so much encouraged, and the consequent influx of specie into Europe, loans of money to borrowers, that were not indigent were too infrequent and insignificant to support any regular trade of lending out money at interest. Those, who were reduced to the necessity of borrowing considerable sums were generally distressed noblemen or persons, who had influence enough upon their respective communities, to communicate to all about them a degree of that odium towards the lenders, which the humiliating necessity of applying to them for relief naturally inspired the borrowers with. There is nothing so virulently bitter as humiliated pride: nor so keenly severe and spiteful as splendid distress: whence the lenders of money

at

at Interest, who in some measure lived upon the distresses of others became necessarily branded with the opprobrium of oppression extortion and injustice. The progress of commerce encreased the necessity and developed the advantages of borrowing money at Interest: but the deeply-rooted prejudices against the lenders of money at Interest did not wear away in proportion. The divines of the reformed churches differed not upon this point from the generally received doctrines concerning Usury: they even appear to have reformed or improved upon the former detestation of this *horrible and damnable péché*, as our old Law-books term it.

In the days of Martin Luther the Pope had publicly declared the *contractus redemptionis* <sup>1</sup> to be lawful, which Luther conceived to be usurious: and so horrible did the toleration of it appear in his eyes, that he thence concluded the Pope to be Antichrist. <sup>2</sup>*Nec sic tamen adesse Antichristum ullus credit.* Melancthon, one of the most moderate divines of that reforming age asserts, that <sup>3</sup> what gain soever is demanded for mere loan is simply forbidden in Scripture (i. e. in Leviticus and Deuteronomy) and is directly

Opinions of  
the divines  
of the re-  
formed  
churches.

<sup>1</sup> i. e. A bargain and sale with covenant of redemption, if the money be paid back again at a day certain.

<sup>2</sup> In Psal. xv.

<sup>3</sup> Definitiones appellationum.

D

repugnant



PART I.  
CHAP. I.

repugnant to equality and justice. <sup>1</sup> Chemnitius  
<sup>2</sup> Aretius <sup>3</sup> Beza <sup>4</sup> Musculus <sup>5</sup> Erasmus <sup>6</sup> Zuinglius  
<sup>7</sup> Camerarius <sup>8</sup> Œcolampadius and numbers of  
others all agree in condemning Usury as simply  
sinful and never lawful.

Calvin's  
opinion.

So violent was the tide of opinion at this time  
against Usury, that Calvin, who in the eyes of  
many rather affected than avoided singularity,  
seemed ashamed or reluctant to avow the con-  
victions of his own mind upon this question.  
He was pressed by a friend to give an explicit  
answer in writing to the question, *Whether*  
*Usury be simply unlawful?* This produced his  
letter upon Usury, in which he makes this  
avowal, little I think congenial with a sincere  
desire of disclosing and supporting truth <sup>9</sup>. “It  
“were indeed to be wished that all Usury and  
“the very name of it were banished from the  
“world: for I desire nothing more, than that  
“I may be never more urged to speak to that  
“point.” And before he delivers his senti-

<sup>1</sup> Loco de Paupert. c. 6.

<sup>2</sup> Problem. de Usurâ, Luc. vi. 35.

<sup>3</sup> Annot. in Luc. vi. 15.

<sup>4</sup> Supplem. in Psal. xv.

<sup>5</sup> De Puritate Tabern.

<sup>6</sup> In 6 Luc.

<sup>7</sup> Catechism in Exod. præc. 8.

<sup>8</sup> In Prophetas Minores.

<sup>9</sup> Epist. de Usurâ.

ments he thus timidly expresses his apprehensions, lest his friend may take advantage of it and extend his words beyond their meaning, *Metuo ne ille verbulo quodam arrepto plus sibi multò permittat quam vellem.* At length however he declares what he seems sorry to admit, that it had not hitherto appeared to him from any scriptural authority that all Usury is altogether condemned. *Nullò testimonio scripturæ mihi constat Usuras omninò damnatas esse.* And *Non-dum constat Usuram omnem prohibitam esse.* He infers therefore with great justice, that we must not judge of Usury from any particular passage of scripture, but by the rule of equity. *Judicandum de Usuris esse non ex particulari aliquo scripturæ loco, sed tantum ex equitatis regulâ.* Notwithstanding this reflex and decisive opinion of Calvin in favour of the lawfulness of Usury, it is not a little singular, that he should be so affected with the general prejudice against Usurers, as to expell them from all human intercourse for practising that, which he no where finds condemned in the christian code. An Usurer, says he in this very letter, ought not to be suffered in a well-constituted government, but should be expelled from the society of man, *sed omninò debet e consortio hominum rejici* <sup>1</sup>.

In

<sup>1</sup> I am sensible, that some of my readers may rather be disposed to reject, than credit the authority of John Calvin.

PART I.  
CHAP. I.

In following the general progress of the prejudices of the christian world against Usury, it is incumbent upon me to mark, if possible, the period of their extinction: for I am free to say, that I have not met within the circle of my acquaintance a moralist or a divine of any school or persuasion whatsoever, who held either in theory or practice, that it was sinful to place out money at a reasonable or legal rate of Interest to a person, to whom the loan was no oppression. The permission countenance and practice by the christian world, of an usage sinful and immoral in

Without submitting to all his opinions, where I find him agree with a great man of a direct contrary religious persuasion from himself, I think it a just tribute to truth to notice the harmony of two eminent men upon a disputed point; and to infer from such coincidence of opinions the very strongest presumption in favour of their rectitude. St. Thomas Aquinas agrees upon this point completely with Calvin. Those therefore, who allow him the title of *Angelical Doctor*, will scarcely give up his authority, even for the sake of questioning an opinion of John Calvin. (S. Tho. Op. de Usur. c. 4.) *Ex prædictis etiam liquet, quare quædam Usuræ in sacra scripturâ, et etiam in legibus humanis concessæ sunt tanquam licitæ, quia quæcumque Usura potest accipi, ut sua res aliquo justo titulo, erit sine scrupulo inculpabilis acceptio.* This opinion of St. Thomas goes further than that of Calvin, in as much as actual permission gives stronger sanction, than mere non-prohibition. The silence of the Council of Trent, which was convened, as it were for the express purpose of rejecting or condemning some opinions of Luther and



in itself and expressly prohibited by scripture will lead to consequences, which every one will obviously draw according to his own conscientious assent to the truth and holiness of the doctrines taught and believed by the church of Christ.

We must not however too hastily conclude, from the generally prevailing doctrines of the schools, that *all* the divines of the church of Christ at all times reprobated without discrimination every species of Usury according to their strict definition of it. The Council of Constance, which was holden about the commencement of the 15th century, though the subject were often started, refrained from passing

and Calvin will be to many a convincing argument, that the opinion of Calvin and others, who followed him upon Usury was not disapproved of by that council. With respect to Usury Du Moulin in particular with several followers of Calvin reprobated the then commonly received doctrine of the schools, viz, that Usury was of itself sinful without any aggravating circumstance of oppression cruelty or extortion; and that the moral guilt of the offence consisted formally in taking Interest upon a loan, though from ever so opulent and gaining a borrower. Now it cannot be easily imagined, that in the extent of matter submitted to the discussion of this council, if this opinion of the schools had been a point of dogmatical faith, the fathers would have permitted so palpable a contradiction of it by Calvin, Du Moulin (3 editions of whose work had appeared before the close of that council) and others to go over unnoticed.

PART I.  
CHAP. I.

Gerson's  
rational  
opinion of  
Usury.

any decree upon it. The fathers of this council were very much influenced by the great Gerson, avowedly the first divine of his days: and no man appears to have spoken with more fairness and consideration of Usury than he has repeatedly done. He tells us, that the very term is frequently misunderstood and misapplied not only by the vulgar but by doctors and statesmen.

<sup>1</sup> *Usurarius contractus nominatur aliquandò talis apud doctores vel populum vel legislatorem, qui propriâ et ex suo genere non est Usurarius.* Gerson both in the foregoing and following passage manifestly declares, that all taking of interest or encrease beyond the principal is not usurious and is not prohibited by the laws of God or man. <sup>2</sup> *Exemplum datum est alibi in materiâ Simonia, et hic potest accipi in materiâ Usurarum, quibus dum quæritur aditus præcludi, condemnantur multi contractus, qui secundum legem Dei non sunt Usurarii nec illiciti, et essent utiles tam reipublicæ quam personis.* This venerable theologian seems to have convinced the council not only that every loan at Interest is not usurious, but that the regulation of the Interest that may be lawfully taken rests not with the church, but with the state: and that council was most wisely silent upon the subject. This sentiment

<sup>1</sup> Gers. de Contr. Part I. Confid. xvi.

<sup>2</sup> Id. ibid. Conf. xi.

of Gerson should be written in letters of gold in the front of every treatise of divinity and law. <sup>1</sup> *Nullus autem debet censeri sapientior in regimine reipublicæ quam legislator. Propterea spectat ad eum precipue quantum possibile est, justum pretium statuere, quale non licet transgredi privatâ voluntate, quæ debet coerceri vel ligari, prout reipublicæ deposcit utilitas.* Upon this true principle are the acts of our parliament on Usury founded and justified.

In the 13th year of Queen Elizabeth (A. D. 1570) we may sufficiently see by the language of the statutes, what were the public opinions and prejudices concerning Usury : for in one of them it is expressly declared, that *all Usury being forbidden by the law of God is sin and detestable.* About 50 years after this, 21 Jac. 1. (A. D. 1623) in the statute which reduced the rate of Interest from 10 to 8 per cent, it is provided that, *nothing in this law contained shall be construed or expounded to allow the practice of Usury in point of religion or conscience.* Of this clause Serjeant Rolle, who published his reports under James I, whilst the effect and impression of the act upon the public mind was fresh, speaks thus : <sup>2</sup> “ Usury hath been holden infamous by “ all statutes as horrible and damnable, and

Prejudices  
against  
Usury in the  
days of  
Elizabeth  
and James.

<sup>1</sup> Gerf. de Contr. Part I. Conf. xix.

<sup>2</sup> Rolle's Rep. Oliver and Oliver, 22 Jac. Mich. B. R.



PART I.  
CHAP. I.

“ when the last statute of 8 per cent. was made,  
“ the bishops would not consent to it, because  
“ there was no clause in it, as Judge Dod-  
“ deridge said, to disgrace Usury, as in former  
“ statutes, and for this as the judges were sitting  
“ upon it, a clause was added to this purpose for  
“ their satisfaction, as may be seen at the end of  
“ the statute.” This is the last spark of the  
expiring ember of this prejudice discoverable in  
any of our public acts; though it were not so  
soon nor so completely extinguished in other  
countries of Europe.

Chinese In-  
terest at 30  
per cent. al-  
lowed of.

The following solemn case and opinion upon  
the lawfulness of taking Interest on the loan of  
money is too singular to be omitted. <sup>1</sup>In the  
year 1645 the christian missionaries in China  
sent to Rome the following case. In the empire  
of China Interest at the rate of 30 per cent. per  
annum is allowed by law on the loan of money  
without any reference to the ceasing of the pro-  
fit or the accruing of any loss. The question  
was: Is it lawful for the Chinese to take such  
Interest? The reason of doubting is, because  
there is always some risk or danger in recover-  
ing back the principal, namely because the bor-

<sup>1</sup> Vide Daniels. 7 Ep. ad Alexandrum Natalem. Less.  
in auct. v. mutuum cas. 3. Steph. l. 4. d. 9. n. 104. La  
Croix Theol. Mor. iii vol. p. 531. Edit. Colon. Agrip-  
pinæ. 1710.

rower may abscond or run away, because he may delay the payment, or because the lender may be driven into a court of justice to recover or for such other reasons. (They might have added the insolvency of the borrower.) The question was referred by Innocent X. to the congregation *de propagandâ fide*, who were summoned by command of his Holiness for this express purpose, and they delivered the following opinion. *Censuerunt ratione mutui immediatè et præcisè nihil esse accipiendum ultra sortem principalem. Si verò aliquid accipiant ratione periculi probabiliter emergentis, prout in casu, non esse inquietandos, dummodo habeatur ratio qualitatis periculi et probabilitatis ejusdem ac servatâ proportionè inter periculum et id quod accipitur.* As soon as this sentence was made known in China the legal Interest of the country was permitted to be given and taken by christians after, as it had been before their conversion.

Notwithstanding this justification of the Chinese taking such enormous Interest upon money by the Propaganda, the See of Rome still kept up the ancient prejudices against Usury, as may be seen by Alexander the 7th's<sup>1</sup> condemnation of the following propositions, which is the exact case of all money lent and

Papal condemnation  
of Usury.

<sup>1</sup> Alexander VII. of the noble family of Chigi of Sienna was elected Pope 7 April 1655, and died 22 May 1667.

PART I.  
CHAP. I.

secured to be repaid with Interest at a future day. *Licetum est mutuanti aliquid ultra sortem exigere si se obliget ad non repetendam sortem usque ad certum tempus.* In the year 1679 Innocent the 11th<sup>1</sup> condemned sixty-five propositions extracted from modern casuists, two of which concern Usury: the forty-first proposition condemned goes to justify the taking Interest for money lent upon this ground, that the money in hand, of which the lender deprives himself, is of more value or service than the money, which he is only to receive at a future day; (according to our old English proverb, *A bird in the hand is worth two in the bush*). *Cum numerata pecunia pretiosior sit numeranda & nullus sit, qui non majoris faciat pecuniam præsentem quam futuram, potest creditor aliquid supra sortem a mutuatario exigere & eo titulo ab Usura excusari.* The forty-second of these condemned propositions asserted, that it was only Usury, when the Interest of the money lent was demanded as a just debt, and not taken as an act of benevolence or gratitude. *Usura non est, dum ultra sortem aliquid exigitur tanquam ex benevolentia vel gratitudine debitum, sed solum si exigatur tanquam ex justitia debitum.*

<sup>1</sup> Of the family of Odescalchi of the Milanese was elected Pope 21 Sept. 1676, and died 12 August 1689.



I never turn my thoughts to any criminal code against Usury without concluding, that all these prohibitory and damnatory laws apply only to such Usury as is an act of oppression cruelty or extortion. Thus even as early as in the days of our Third Henry, when Usury was by the common law only allowed to the Jews, we find Gregory IX<sup>1</sup> ordering the Bishop of Durham to repay a sum of money borrowed by his predecessor to some merchants (probably Jews) with all costs incurred and a reasonable satisfaction for the use of the money, without Usury (i. e. I presume without exorbitancy). *Mandamus quatenus iisdem de pecuniâ ipsâ cum justis & moderatis expensis & congruâ satisfactione damnorum, Usuris omninò cessantibus, satisfacias, ut teneris.* The late bishop it must be presumed had become bounden for his successors for the repayment of the sum borrowed with interest: but there was no question of extortion or oppression. The bishop consults the Pope upon the nature of the contract, and of his obligation to fulfil it. His Holiness does not tell him, that it was usurious and therefore sinful: but commands him to pay the principal with moderate interest, *satisfacias, ut teneris.* Now let the Interest or *satisfactio damnorum* have been ever so reason-

PART. I.  
CHAP. I.

Bishop of  
Durham  
commanded  
to pay Interest by the  
Pope.

<sup>1</sup> He was elected on the 22 March 1227, and died 21 Aug. 1241. Vid. Decret. Greg. IX. Lib. ii. tit. 2. cap. 17.

able,

PART. I.  
CHAP. I.

able, yet it was evidently *aliquid ultra sortem*: and therefore, if the doctrine of more modern schoolmen had then unexceptionably prevailed, Pope Gregory could not have commanded the payment of it, nor could the Bishop of Durham obeyed the *mandamus* of his superior without manifest sin.

Brief of Benedict XIV.  
against  
Usury.

So late however as on the first of November 1745<sup>\*</sup> Benedict XIV explained himself more fully upon the subject of Usury, than any of his predecessors: and although he seem to give fully into the definition of modern schoolmen, who place the guilt and malice of the offence in the taking of any encrease on account of the loan whether from a rich or a poor man; yet in this very decree, he says “ It is not denied, that  
“ one’s money may be oftentimes lawfully placed  
“ out and employed, by other contracts different from loans, either to secure a better annual income, or to carry on a fair traffic or  
“ business, or to draw from thence an honourable gain.” As I cannot exactly bring every part of this very extraordinary brief to harmonize with each other or with that general principle of reason, to which the practice of all christendom has been long adapted, I shall refrain from any further observation upon it; merely remarking that this same Pope by an-

<sup>\*</sup> Vid. Append. No. 1.

other brief' addressed to the subjects of his own states two months before the other (7th September 1745) allows of and actually settles the rate of Interest upon the sums of money, which he enabled several corporations and communities to take up at interest, to discharge the debts they had incurred by the march of troops through their country in 1742. As all moral documents are but intended for practice, I cannot help attaching more sanction to the universal practice of all respectable men and teachers, than to the obscure, dubious, or discordant declarations of the most learned individuals. Regular and constant loans at a fixed rate of Interest are negotiated and sanctioned as well in the papal dominions, as throughout every other state of Italy, and have been so from the twelfth century up to the present day, as is incontestibly proved by the learned author of the Treaty of Commercial Loans <sup>2</sup>.

Having now shewn how violent and unexceptionable have been the prepossessions of the public in this, and in every other christian country against Usury, it remains for me to shew how naturally the common law against the practice of it arose, became established, and supplied the grounds of the different statutes, which have

<sup>1</sup> Vid. Append. No. II.

<sup>2</sup> Ch. vii. vol. 3.

been



PART I.  
CHAP. I.

been passed upon the subject. Some general observations however will not be irrelevant to the point in question, that tend to draw a strong line of discrimination between the demand and receipt of that Interest, which is equitable and legal, and that, which is hard oppressive and unjust. The former is against no law: the latter is against all law both written and unwritten.

General reflections on the nature of Usury.

I readily admit that the great law of God and Nature, which is unchangeable because founded in and adapted to the essential perfection of the works of the Creator ever has and ever will enjoin philanthropy and benevolence towards all our fellow-creatures unexceptionably, and consequently prohibits every species of oppression extortion and cruelty towards them. These transcendant principles of human nature are paramount to all civil institutions; they cannot be changed extinguished or ever affected by them. No human laws can specify all possible occasions exigencies or conditions of complying with this general law of social nature. The Deity from whom we received our nature infused into us at the same time a consciousness of the commands, which he then imposed upon us. The execution of these commands (or laws) in each particular instance he left not to the discretion of men: he engrafted their obligation in the existence of mankind: he made these laws unexceptionably

tionably binding, and the occasions of fulfilling them he adapted to the indefinite variety of all possible cases. The great moral obligation of affording relief succour and comfort to our distressed fellow-creatures, which prevents extortion and oppression had the same binding obligation upon mankind before God gave the law to Moses upon mount Sinai, that it now has and ever will continue to have upon man, whilst his nature continues such as it now is. The particular laws of particular nations, which extend the lawfulness of Usury to a particular rate of Interest no more interfere with the general law of nature against extortion and oppression, than the peculiar laws of property secure the standing ear of corn against the imperious cravings of a starving individual. There may be cases, in which the exaction of *any* Interest upon the loan of money from a distressed individual may amount to oppression and cruelty. Such cases are without the prescience and provision of human legislators : they can only be regulated by the conscience of the party, upon whom the invariable and indispensable law of nature operates : they can neither be enjoined by precept nor enforced by punishment. Hence we have never seen any legislators, ancient or modern, undertake to prohibit and punish, or enjoin and reward

PART I.  
CHAP. I.

Whether the  
borrower be  
guilty of the  
crime of  
Usury.

reward any specific acts for or against benevolence or charity.

Whilst I am endeavouring to account for the excessive acerbity, with which christian moralists and divines have pursued and reprobated even the most moderate rate of Usury, it is to me unaccountable, that not one of them, at least that I have discovered, has laid it down that it was sinful to borrow the money and pay the Interest upon it : yet is it not evident, that he who solicits the commission of the crime by another, and pays the *pretium iniquitatis*, is fully *particeps criminis* ? And if the contract for and actual receipt of the Interest or usurious encrease be against the Law of God; he that proposed sought or entered into the contract and fulfilled it by the payment of such Interest cannot surely be exempted from the immorality or sinfulness of the act. By our common law the punishment for the offence of Usury is confined to the receiver of it only; which tends to prove, that the common law of England knows no Usury, which is not an act of hardship or oppression, and no hardship or oppression in a money-transaction, which is not usurious in its nature.

As the whole guilt of Usury has been ever made to fall solely upon the lender, in so much, that, as we shall shew hereafter, the borrower is not considered by our law *particeps criminis*, as



Opinion  
that the  
borrower  
does not sin.

to the use and application of the penal effects of the statutes : it will be requisite to consider fully and impartially the reason and grounds of this doctrine. Dr. Wilson has entered more fully than any other writer, that I have met with into the reasoning of the general rule<sup>1</sup> : “ And now  
 “ cometh to my mind a matter most needful to  
 “ be spoken of, after such heats of speech used  
 “ against the Usurer, and that is, whether he that  
 “ payeth Usurie be an offendour or no. For  
 “ some thinke, that bicause there can be no  
 “ Usurie without borrowing, those therefore that  
 “ borrowe are in faulte, as they which do give  
 “ cause of this horrible offence, &c. I doe an-  
 “ swere, that everie borrower doth not sinne, bi-  
 “ cause it is an involuntarie action, and much  
 “ against the borrower’s will, to paie money  
 “ upon Usurie, who would rather with all his  
 “ hart borrowe freelie, and paie nothing for the  
 “ lone than otherwise.” He then strengthens his assertions by comparing the necessity of the borrower to that of delivering a purse to a highwayman, or of throwing overboard the cargo to save a vessel from sinking. This mode of reasoning shifts the main question, and does not meet the difficulty in any shape.

The main question is, Whether Usury be in

<sup>1</sup> Dr. Wilson on Usurie, p. 150.

## PART I.

## CHAP. I.

Is Usury  
malum in  
se?

itself *et ex naturâ suâ* a sinful and immoral act or *malum in se*? If it be, then I presume, the loosest casuist will not admit of any direct or indirect co-operation in the act, which is not a participation of the crime; as it would be impossible for a man with full deliberation to concur in promote cause procure countenance or sanction an act of robbery adultery murder or any other act commonly allowed to be sinful and immoral in itself, without partaking of the sin or immorality. Dr. Wilson (p. 34.) compares Usury with these very crimes: and to shew how strongly he was impressed with these convictions, he says even of the person, who takes the most moderate Interest for his money, “The Usurer, “that taketh less, bicause he would seeme honest, “shall go to the divell, bicause he hath wittingly sinned against God, as wel as the other “that taketh more; for that the lawe saith “plainlie, Thou shalt not take any thing over and “above that thou hast lent.” And in the next page he adds, “There is no meane in this vice “more than there is in murder theft or whoredome. And therefore I saie and maintaine it “constantlie, that all lending in respect of time, “for anie gaine, be it never so little, is Usurie, “and so wickedness before God and man, and “a damnable deed in itself; bicause we are “commanded

"commanded to lend free, and to look for  
"nothing over and above that we did lend."

PART I.  
CHAP. I.

Nature of  
ordinary  
loans at In-  
terest.

An usurious loan can scarcely be said to re-  
move distress, as according to these reprobato-  
rs of Usury, the unfortunate borrower cannot  
fall under a greater misfortune than that of Usu-  
ry: his borrowing therefore becomes an aggra-  
vation and not an alleviation of his distress: and  
therefore this inveterate persecutor of Usurers  
bluntly tells them (p. 37.) "For my part, I will  
"with some penall lawe of death to bee made  
"against those Usurers, as well as against theeves  
"or murtherers, for that they deserve death  
"much more than such men doe; for these  
"Usurers destroye and devour up not onlie whole  
"families but also whole countries, and bring  
"all folke to beggerie that have to doe with  
"them." I must however observe, that mo-  
ney is more frequently borrowed at Interest (or  
Usury) by the rich, than the poor and needy:  
for few will find usurious lenders, where the

<sup>1</sup> Dr. Wilson, who was one of the Masters of the Court of  
Requests dedicated his work to Lord Leicester and wrote  
and published it, as appears from the date of the epistle in  
1569 near seven years before the 13th of Eliz. was passed.  
The edition of 1584 about eight years after this act displays  
in front almost more than an usual *imprimatur*. "Seen and  
"allowed according to the Queen's majesty's injunctions,"  
though the book be evidently against the efficacy and lawfulness  
of the statute.



PART I.  
CHAP. I.

borrowers do not command adequate funds, or means of ensuring the payment both of Principal and Interest. Whoever therefore borrows at Interest, that is not reduced to the last extremity, cannot plead this urgency of his necessities in favour of his loan : and therefore if these enemies of all Usury argue consistently, every man sins before God and man, that pays Interest for money, if he can possibly exist without the loan. The universal practice of all mankind, the sanction of the express laws of the best constituted governments, and the loud cry of natural justice and equity call upon us for the direct contrary conclusions.

Conclusion  
of the Chap-  
ter.

The summary conclusion from the contents of this chapter is, that it is *not sinful*, but lawful, for a British subject to receive legal Interest for the money he may lend, whether he receive it in annual dividends from the public, or in Interest from private individuals, who may have borrowed it upon mortgage bond or otherwise. Few perhaps will deny so simple and obvious a position : but when I reflect, that it is diametrically contradictory of the opinions and concurrent testimony of the fathers and divines of at least 1500 years of the christian æra, as understood by modern schoolmen, I feel myself particularly called upon to account for the variation of the theory  
and

and practice of the whole christian world for so many centuries upon this subject.

PART I.  
CHAP. I.

Nature of  
Property

<sup>1</sup> Permanent and transferable property is essentially and exclusively the creature of the sovereign power of the state: the acquisition enjoyment use and transfer of it depend upon the laws of each particular state. Now if the civil and spiritual power be each original sovereign and independent upon each other, it is impossible, that one and the same object should in the same respects be liable to the control of both; for then, the two controlling powers could not be independent upon each other, nor sovereign; for thus they would meet and clash when brought into action. As then the disposal and application of property forms no part of the power given by Christ to his apostles and their successors, when the churchmen speak and dictate upon this subject, which is evidently out of the resort and competence of the spiritual power, they are more likely to err, than statesmen politicians and lawyers upon a matter, that lies exclusively within the management and control of the civil magistrate, as Gerson so emphatically expressed it, *spectat ad eum præcipuè quantum possibile sit*. Such christians as believe, that in virtue of Christ's promises his church upon

not under  
the control  
of the spiri-  
tual power.

<sup>1</sup> Vide Church and State, 2 ch. iii book, *et alibi passim*.

## PART I.

## CHAP. I.

earth shall never teach error or hold out false terms of communion to it's members, confine this belief to the authority of the church in declaring only what was primitively revealed to the apostles by Christ. Now it appears reasonable and indeed necessary, that if any such ordinance or revelation had been made by Christ to his apostles, it must have formed an article of some creed or commandment and been holden out as a term of communion to all the members of the church. This is not the case in the Roman Catholic church : and upon the authority of a very learned Protestant divine<sup>1</sup> of the last century there appears a perfect harmony of opinion upon this subject between the church of England and the church of Rome. " Neither doe I herein coast upon any controversy of *believing as the church believeth* : for " this that we have in hand is no principle of " faith, no myserie of salvation to be apprehended in the simplicitie of beliefe : but " a point of moralitie belonging to the second " table and so determinable in reason by the " rules of equitie and charitie." An avowal of this nature from so decided an enemy to Usury

<sup>1</sup> Roger Fenton bachelor of divinity in 1611 wrote a most violent treatise against the lawfulness of any sort of Usury, which he dedicated to Lord Chancellor Ellesmere in small quarto. Vid. p. 75.



will amount to the strongest proof, that Usury is not prohibited <sup>1</sup> by the New Testament; otherwise

PART I.  
CHAP. I.

<sup>1</sup> There is a remarkable passage in St. Luke from which I think a very strong inference is to be drawn in favour of the lawfulness of Usury or of placing out money at Interest. (c. xix. v. 22.) "*Wherefore then gavest thou not thy money into the bank, that at my coming I might have required mine own with Usury?*" There is no question, but that this was spoken in a parable: yet it must be admitted, that the usages and customs, which our blessed Lord alluded to in his parables were such as were known and frequent amongst the Jews, to whom he spoke. It follows then, that there were at Jerusalem bankers and brokers who borrowed or took in money at Interest: and it is to be presumed lawfully. For I do not conceive, that our divine Lawgiver would make an illicit sinful traffic or abuse the vehicle of instruction in his heavenly doctrine. As St. Matthew reports this parable, it appears still stronger. (c. xxv. v. 27.) "*Thou oughtest therefore to have put my money to the exchangers, and then at my coming I should have received mine own with Usury.*" It is to me incredible, that our blessed Lord should in this parabolical instruction to the Jews, have thus recommended or enjoined that to be done, which if done would have been in violation of the law of Moses; I infer therefore, that even amongst the Jews, there were lawful methods of placing out their money at Interest or upon Usury, which were not incompatible with the law: and if so; Usury could not be in itself sinful or immoral.

It is indeed possible that these bankers or exchangers might have been aliens: but I think it little probable. And it appears utterly impossible, that the words of our Lord in this parable should have any reference to those money-brokers, whom he drove out of the Temple almost immediately after

PART I.  
CHAP. I.

True sense  
of the Usury  
spoken of by  
some of the  
Fathers.

otherwise it must have been a *principle of faith* to every christian, as no christian is exempted from believing every part of the Scriptures.

There can be little doubt, but that the Usury, which the Fathers so vehemently inveighed against was always looked upon as ne-

he had delivered these instructions to the Jews, of which the evangelists give the account in the same chapter. Besides, if we believe St. Jerome, the trade or traffic, which these brokers bankers or exchangers carried on, was widely different from that of *taking in* money at Interest or upon Usury. For Maldonatus (in Matt. 442.) gives the opinion of St. Jerome as the best comment upon this passage; in which that holy father, who had upon the spot made the customs and language of the Hebrews his peculiar study, informs us, that the corrupt priests of the Temple had set up a very iniquitous traffic of the sale of such things, as were usually offered in sacrifice; which were bought by persons coming to the Temple and reverted again into the hands of the priests, *ut et venderent non habentibus et ipsi rursus emptas suscipere.* The priests also established money changers or brokers there, to lend out money upon security and they took the Interest or Usury upon it in different wares, thus to evade the law, that forbade *Usury*, as they interpreted it, in coin. But this, he observes, was a mere shift of the covetous priests, who sought every contrivance to ensnare and prey upon the people. *Excogitaverunt igitur sacerdotes quomodo pradam de populo facerent.* Whence it appears, that even at Jerusalem, there were lawful methods of placing out money amongst the Jews at Interest, which were not prohibited by law: and probably because such loans were not made to the poor or distressed, in which the immorality of Usury appears to me exclusively to consist.

cessarily oppressive or bearing upon the poor and indigent. Thus after St. Gregory Nyssenus had preached against Usury and worked up the whole city to an extraordinary execration of the crime, the Usurers by way of revenge, threatened rather in future to let the poor starve, than lend them any more money. It appears, that St. John Chrysostome who is also supereminently violent in his declamations against Usury, meant *such Usury* only, because he elsewhere speaks of and recommends to parents to place out their money at Interest upon good securities and rather leave it so placed out to their children, than in specie: first to ensure them a better income and secondly to save them the trouble of seeking a fresh security. <sup>1</sup> “*Si*  
*“ argentum haberes sub fœnore collocatum et debitor*  
*“ probus esset, malles certè syngrapham quam aurum*  
*“ filio relinquere, ut inde proventus ipsi esset mag-*  
*“ nus nec cogeretur alios quærere, ubi posset col-*  
*“ locare.”* To relieve the poor and distressed is certainly at all times commendable, but whether it be by absolute donation of charity, or what is almost equivalent by a gratuitous loan, the case will vary but little, as to the duty and principle of action. Benevolence and charity are certainly strongly recommended to us in the

<sup>1</sup> Joan. Chryf. in Matt. Homil. lxxvj and lxxvij. p. 660. l. 6.  
 Tom. vii. edit. D. Bern, de Montfauçon,



## PART I.

## CHAP. I.

Scriptures, generally enjoined by the law of social nature and emphatically enforced by the spirit of christianity. No man will deny that voluntary poverty was recommended to the young man in the gospel: but that, or the commendation of any other point of evangelical perfection widely differs from an obligatory and indispensable precept: as well might it be argued from one case, that the absolute retention or the possession of property was sinful, as from the other, that it was sinful to place out that property at Interest, which should not be an act of oppression to the distressed poor or unfortunate<sup>1</sup>.

Sensible that I have dwelt longer, than has appeared necessary to many of my readers upon a ques-

\* Of this same opinion is the learned Grotius, whose vast knowledge both of the sacred and profane writers raised him above the warping prejudices of particular schools. He says \*, that although the positive prohibition to the Hebrews not to take Usury from their circumcised brethren should not be of necessary obligation, yet it will be admitted at least to be of moral perfection. *Si non necessaria certè moraliter honesta*, and in that light more binding upon christians than upon the Jews: as christian charity and benevolence are not confined to any particular set of men, as was the spirit of the Jewish law: *ea nunc præstanda sunt homini cuivis, omni populorum discrimine per evangelium sublato, latiusque extenso proximi intellectu*. And in confirmation of his opinion he quotes what Lactantius had said upon the duties of a chris-

\* Grot. *De jure belli et pacis*, L. ii. c. 12. f. xx.

a question not now doubted by any, I must remind them, that the prime end of this chapter was to trace the real source and origin of the common law of England against Usury, which must essentially have sprung out of the opinions feelings and prejudices of our early ancestors upon the subject. And although I do not hold, that the duration of error for any length of time can justify the continuance of it in those, who see the error, yet I have that deference for a general and successive concurrence of respectable authorities, that they ought not to be questioned denied or resisted but upon the strongest and most undeniable grounds.

tian. *Non dabit in Usuras pecuniam, hoc est enim de alienis malis lucra captare.* (Epit. Inf. c. 2.) And also a saying of St. Ambrose, (De Offic. iii. c. 2.) *Subvenire non habenti, humanitas est: duritiæ autem plus extorquere quam dederis.* Both which sentiments clearly prove, that these two fathers spoke of biting and oppressive Usury, as a breach of general humanity or philanthropy, and not of the mere taking of Interest for money lent, as a violation of a divine precept of universal and indispensable obligation.

## CHAP. II.

OF USURY BY THE COMMON LAW  
OF ENGLAND.

## CONTENTS.

*How the Common Law is affected by Statutes—  
Lord Coke's Opinion questioned as to the Abolition  
of the Common Law—The Repeal made by the  
37 Hen. VIII. cannot apply to an unwritten Law  
—Usury punishable in the Ecclesiastical Courts  
by Common Law—Difference between that Usury  
which was punishable in the Spiritual Courts  
and that which was punishable in the Common  
Law Courts—The Opinions of Bracton Glan-  
ville and Fleta on Usury—Usury allowed to the  
Jews by Common Law—The Statute of Merton  
affected only the Jews.*

PART I.  
CHAP. II.

Usual accep-  
tation of the  
Common  
Law.

WHEN I speak of the Common Law of England, I mean it in that sense, which Sir Matthew Hale<sup>1</sup> calls it's "usual and common" acceptance. This is that law, by which proceedings and determinations in the King's or-

<sup>1</sup> Hist. of the Common Law, c. ii.

"dinary



" dinary courts of justice are directed and guid-  
 " ed. This directs the course of descents of  
 " lands and the kinds : the natures and the ex-  
 " tents and qualifications of estates : therein also  
 " the manner forms ceremonies and solemnities  
 " of transferring estates from one to another :  
 " the rules of settling acquiring and transferring  
 " of properties : the forms solemnities and obli-  
 " gations of contracts : the rules and directions  
 " for the exposition of wills deeds and acts of  
 " parliament. The process proceedings judg-  
 " ments and executions of the king's ordinary  
 " courts of justice : the limits bounds and ex-  
 " tents of courts and their jurisdiction. The se-  
 " veral kinds of temporal offences and judg-  
 " ments at common law : and the manner and  
 " application of the several kinds of punish-  
 " ments, &c."

PART I.  
 CHAP. II.

When a statute or act of parliament is made concerning any point of common law, the common law concerning that point is changed altered or affected by the statute as far only, as the statute expressly goes. So where an act of parliament inflicts a new punishment for an old offence at common law, it still remains an offence and punishable by the common law, as it was before the act passed. Forgery for instance was made felony by the 5th of Elizabeth ; yet it remained an offence at common law punishable,

Whether the  
 common law  
 be now sub-  
 sisting.

PART I.  
CHAP. II.

able, as it was before that statute. I should here say positively without hesitation, that the common law of Usury at this moment exists in its full extent, except as to those instances, in which it has been expressly altered by subsisting statutes, were it not for the authority of Lord Coke. There is however a difference to be made between the authority of our law writers, be they ever so great, when they deliver their own opinions and when they report the decisions of the courts. Lord Coke's own opinions claim general, not universal submission. And it is with the greatest diffidence, that I venture to suggest, that in this instance I feel myself under the necessity of withholding my assent to the opinion of this great man, when he asserts<sup>1</sup>:  
 “ But now by the statutes of 37 Hen. 8, and  
 “ 13 Eliz. all former acts statutes and laws  
 “ ordained and made for the avoiding or pu-  
 “ nishment of Usury are made void and of  
 “ none effect. So that at this day, *neither the*  
 “ *common law* nor any statute is in force, but  
 “ only the statutes of 37 Hen. 8, 13 Eliz. and  
 “ 21 Jac. And the ecclesiastical jurisdiction is  
 “ saved by the said statute of 13 Eliz., as there-  
 “ by it appeareth.”

If according to this opinion of Lord Coke

<sup>1</sup> 3 Instit. 152. c. 70.

the common law concerning Usury be not now in force, it will be a research of mere curiosity to investigate what the common law once was concerning that offence. Whereas my object is to prove, that notwithstanding the statutes of Henry 8th and Eliz. Usury is at this day, an offence and punishable at common law, as it always was. My particular view in entering upon this discussion, is not to revive the execution of the common law punishments against Usurers, but to establish and support that humane just and now peculiarly necessary maxim, that *no action can be founded upon a contract, that is usurious at common law*; the very possibility of which is incompatible with the rectitude of Lord Coke's opinion, that *there is no common law concerning Usury now in force*.

For the full and fair examination of this opinion or comment of Lord Coke, we must first enter into some sort of an exposition of the 27th of Henry 8th, upon which I beg leave to make this preliminary observation. This parliament acted upon the wisest principle of legislation, which to the great detriment of this country has been generally neglected by all subsequent legislators. Finding that the existing statutes concerning Usury wanted explanation and amendment, their first step before they undertook to remedy the evil, was to repeal all the  
subsisting

PART I.  
CHAP. II.

Reason for  
examining  
the question,  
Whether the  
common law  
be or be not  
abolished?

Propriety of  
repealing  
old statutes  
when new  
are made.



PART I.  
CHAP. II.

subsisting statutes, that there might exist no possible variance or inconsistency in the written law upon the subject. The full extent of the mischief arising out of a multiplicity of statutes *in pari materia* can only be thoroughly known to those, who have undergone the irksome task of expounding and harmonizing a variety of statutes affecting the same object. Did only one written law exist at one time upon one subject, our code of statute laws would then probably be perspicuous simple and efficient, and not, as in too many instances they now are, a mass of obscurity perplexity contradiction and mischief.

Effect of the  
repealing  
part of the  
act of Henry  
8th considered.

The preamble of this <sup>1</sup> act speaks too clearly of itself to need a comment. “Where before  
“this time divers and fundry acts statutes and  
“laws have been ordained had and made with-  
“in this realm for the avoiding and punishing  
“of Usury, being a thing unlawful, and of other  
“corrupt bargains shifts and chevizances, which  
“acts statutes and laws been so obscure and  
“dark in sentences words and terms, and upon  
“the same so many doubts ambiguities and  
“questions have arisen and grown, and the same  
“acts statutes and laws been of so little force  
“and effect, that by reason thereof little or no  
“punishment hath ensued to the offenders of

<sup>1</sup> 37 Hen. 8th, c. ix. intituled *A Bill against Usury*.

“the

“the same, but rather hath encouraged them to  
 “use the same.” It is a matter of serious im-  
 “portance to ascertain precisely, what was re-  
 pealed and what was enacted by this statute.  
 The enacting part of the statute I shall hereaf-  
 ter consider, when I discuss the nature of Usury  
 by statute law: the question now under discus-  
 sion is, Whether by this act of Henry VIII the  
 common law of Usury were made void and of  
 none effect? Lord Coke’s opinion in the affirm-  
 ative I cannot subscribe to. The words of the  
 repeal appear conclusive against it, viz. that the  
*said acts statutes and laws heretofore made of or*  
*concerning Usury shifts corrupt bargains and che-*  
*vizances and all pains forfeitures and penalties*  
*concerning the same.* These words evidently re-  
 fer to and are merely co-extensive with the  
 words of the preamble, *sundry acts statutes and*  
*laws ordained had and made within this realm for*  
*the avoiding and punishing of Usury.* Now it is  
 manifest, that these acts statutes and laws must  
 be *written* laws; for to them alone is applicable  
 any obscurity in *sentences words and terms*: the  
 mischief, which is complained of and intended  
 to be remedied by this statute, could not have  
 arisen or grown out of an *unwritten law*, such  
 as the common law of England is. It appears  
 equally unquestionable, that the legislature had  
 only in contemplation the inefficacy of such  
 F punish-

The words  
 not applica-  
 ble to an un-  
 written law.

PART I.  
CHAP. II.

Lord Coke  
contradicts  
himself.

punishments, as were directed and imposed by these acts statutes and laws, which were so obscure in their *sentences words and terms* as to be of little force and effect.

The learned commentator upon these statutes of Usury appears in the very paragraph I have cited to have substantially contradicted his own opinion upon the abrogation of the common law. For says he, *the ecclesiastical jurisdiction is saved by the said statute of the 13th of Elizabeth, as thereby it appeareth*. Now the direct inference from Lord Coke's words is; therefore the common law was not abrogated or abolished by the 27th of Henry VIII: for if it had been, then the *ecclesiastical jurisdiction* over Usury could not have been *saved*, though it might have been *revived* by this subsequent act of Elizabeth. Now this saving of the ecclesiastical jurisdiction of which Lord Coke here speaks, is the direct saving of the common law against Usury<sup>1</sup>: for there are many uncontrovertible documents to prove, that by the common law

<sup>1</sup> The 13th Eliz. (chap. viii. sect. 9.) which revived the 27th Hen. VIII, (that had been repealed by 5th and 6th of Edw. VI,) from the 20th day of June 1570, declared; that in case any person should offend against the said revived act; *then all and every such offender and offenders shall and may also be punished and corrected according to the ecclesiastical laws heretofore made against Usury.*



of England the crime of Usury was only punishable by the ecclesiastical court.

We find in 15th of Edward III. (A. D. 1341<sup>1</sup>), that the clergy complained through the archbishop of Canterbury and other bishops, that *the justices had punished Usurers*: to which the answer was; "*The king will have the punishment of dead Usurers and the ordinaries of living Usurers.*" An irrefragable proof, that by the common law of England at that time, the crime of Usury was punishable by the ecclesiastical court.

Sergeant Rolle, in his abridgment<sup>2</sup>, gives a fuller answer to this. "15 Edward III. c. vi. "It is accorded and asserted, that the king and "his heirs shall have the cognizance of the "Usurers dead, and that the ordinaries of holy "church have the cognizance of Usurers on "life, *as to them appertaineth* to make compulsion by the censures of holy church for the "sinne, to make restitution of the Usuries taken "against the laws of holie church, (Mes c'est "statute fuit apres en le dit anne repele.)" I cannot find any substantial authority, upon which Sergeant Rolle could so positively assert, that this statute was repealed in the same year.

PART I.  
CHAP. II.

Usury punishable in the ecclesiastical courts by common law.

Whether the ecclesiastical jurisdiction over Usurers introduced by statute of 15 Edw. III.

*See Rolle. Part. 6. R. 2. n. 25 B. 2 part. 71.*

<sup>1</sup> Prynn's Cott. Rec. Tur. Lond. 32, 33.

<sup>2</sup> 801. Tit. Usurers.

PART I.  
CHAP. II.

Nor when it is considered, does the effect of repealing it clearly appear. By it nothing new was enacted; and when we take into reflection the complaint of the clergy, that the Justices usurped their authority in punishing Usurers, and then refer to that complaint the answer, that the ordinaries shall have the cognizance of live Usurers *as to them appertaineth*, we must necessarily conclude, that the statute did no more than declare, what the pre-existing law upon the subject was: for I take, the words, *as to them appertaineth* to mean neither more nor less, than that they had such cognizance by the common law. Now supposing this statute to have been purely declaratory of the common law, and that it was simply repealed without any further enactment or declaration: the effect of the repeal could not go the length of abolishing the common law, which pre-existed the declaratory statute. The whole possible effect of a repeal is to do away the effect of the act repealed: but if it abolished a law, which existed before the passing of the act repealed, it would operate further, than the doing away the effect of the act repealed: consequently should even this statute have been repealed in the same year of the 15th Edward III, yet would the cognizance of Usurers by the ordinaries have remained after the repeal precisely, as it was before the passing

passing of the act repealed. Sir Edward Coke<sup>1</sup> says indeed, *that this statute was afterwards repealed, as hereafter shall appear*: by which I presume he means, that it was repealed by the act of Henry VIII: and not in the same year, as Rolle asserts. If however this declaratory act had been repealed the same year, like some other acts for want of the royal assent, it is still more clear, that the common law could not have been abolished by that act, which barely declared the statute (passed without such assent) void and annulled. “Willing nevertheless, that the articles contained in the said pretended statute, which by other of our statutes or of our progenitors kings of England have been approved, shall according to the form of the said statute in every point, as convenient is, be observed.” This is a most pointed declaration, that the repeal of this statute should not produce any effect whatever upon pre-existing laws. If however Sir Robert Cotton and William Prynne be faithful in abridging this petition of the clergy and the king’s answer to it, it is impossible, that what is called and published as the Vth chapter of the 15th Edward III should not have received the king’s most formal assent; and consequently this statute, or chapter or article of the statute was not annulled by

<sup>1</sup> 3 Instit. 152.



PART I.  
CHAP. II.

that act, which avoided a statute of the same session, that had not received the royal assent. It is evident that in the year 1486, this very act said by Rolle to have been repealed was by the parliament of 3 Henry VII considered to be in full force as then existing, as a noble and special statute for remedying inordinate changes and rechanges, of which I shall speak hereafter.

In the 50th year of the same king Edward III. (A. D. 1376,) the commons petitioned, *That the like order that is made in London against the horrible vice of Usury may be observed throughout the whole realm*: to which the answer was; *that the old law shall continue*. Now in order to find what this *old law* was, we must necessarily look up to the then existing laws concerning the punishment of Usurers, and we shall find, that by the common law the ordinaries had cognizance of the offence and the punishment of live Usurers: and because the order made for the suppression of Usury within the city of London must have depended upon the lord mayor and his court and not upon the bishop, therefore the answer was, that the old law should continue; which in other words meant, that out of the city of London the ordinaries should retain their cognizance and jurisdiction over Usurers, *as to them appertained*. This we find

find confirmed by the answer given to the complaints of the commons in the very next reign within the short space of about six years from that time; for in the 6th of Richard II<sup>d</sup>, (A. D. 1382,) several petitions or bills were exhibited by the commons in Parliament *to have some remedy against Usurie Usurers and Brokers*: the general answer to which was—*Touching Usurie the king would the laws of the church should discuss the same: but if any man be grieved by Usury upon accompt trespass extortion oppression falsehood deceit or such like means, the laws and customs of the realm shall punish the same.*

Distinction  
of Usury.

Rolle in his abridgment quotes from the parliamentary rolls an answer to the petition of the commons, that places this matter out of all doubt: and yet it is wholly unnoticed by Sir Robert Cotton, William Prynne and Lord Coke. 5 Henry IV. (A. D. 1403.) “The commons prayed, that as in the city of London, so elsewhere throughout the realm the horrible and damnable sin of Usury commonly practised under the name of chevizance, and by strangers called brokers, who have no other livelihood but their gains thereof, artfully converted into various forms, and which are done openly by their means, whereby many of all estates both spiritual and temporal

<sup>1</sup> Prynne's Cott. Ab. Rec. of the Tower, 285.

## PART I.

## CHAP. II.



“ have been empoverished, and their wealth and  
 “ lands lost: that it may be ordained, that no  
 “ alien nor denizen may be a broker of Usury  
 “ for the time to come; and that this may be  
 “ inquired into every year, and whoever shall  
 “ be convicted of being such broker, shall for-  
 “ feit all his goods to the king.” To which  
 the answer was: “ *Let this matter be governed*  
 “ *and ruled according to the law of holy church*  
 “ *during the life of such Usurers.*”

What Usury  
 punishable  
 in the tem-  
 poral, what  
 in the spiri-  
 tual courts.

From the answer which was given to the commons in the 6th of Richard II, we may perceive a very marked difference between that Usury, which was subject to the cognizance of the spiritual court, and that, which was liable to common law process. It appears not improbable, that the taking of regular and moderate Interest, which by law was formerly permitted to the Jews, but never to Christians, was that species of Usury, of which the ordinary claimed cognizance. But the common law gave redress wherever any unfairness of account, trespass, extortion, oppression, falsehood, or deceit, accompanied the transaction: which seems to import, that every hard and oppressive money bargain was by the common law of the land *usurious* and punishable as such by the common law courts. And it must have been for such Usury, that Lord Coke says an Usurer was



fin'd by a jury<sup>1</sup>, *Joannes Hoperd convictus per juratores pro Usurâ capiendâ 11s. 8d. pro 20s. præstandis et sic de similibus.* This fine by a jury could not have been imposed in the ecclesiastical court, which knows no jury. Such also must have been those Ufurers, who as Lord Coke says, were indicted for taking Usury before justices in eyre (which was a common law court) and some were pardoned by the king and others not. It is rather surprizing, that Lord Coke did not notice this difference between that Usury which was punishable in the civil and that, which was only punishable in the ecclesiastical courts. He speaks indiscriminately of the punishments of Usury<sup>2</sup>, "By the ancient laws of this realm Usury was unlawful and punishable, although the punishment was not always one, but sometimes greater and sometimes lesser."

It is not improbable, that the chief reason, which rendered our ancestors so desirous of transferring the punishment of simple Usury from the ecclesiastical to the civil courts, was their affection to the trial by jury: yet such influence had the clergy upon the King and peers, and so tenacious were they of the power and

Reluctance  
of parlia-  
ment to al-  
ter the cog-  
nizance of  
Usury.

<sup>1</sup> 3 Instit. 153. He quotes Hill. 6 Edw. III. coram Rege. Rot. 130. Norff.

<sup>2</sup> Ibid.

juris-

PART I.  
CHAP. II.

jurisdiction of their ecclesiastical courts, that parliament never would alter the common law of the land in that respect<sup>1</sup>. The commons in the 14th year of Richard II. (A. D. 1390,) prayed, "That against the horrible vice of  
" Usury, then termed schefes, and practised as  
" well by the clergy as laity, the order made by  
" John Nott, late mayor of London, may be  
" executed through the realm." To which the answer was—"The king willeth, that those or-  
" dinancies be viewed, and if the same be found  
" to be necessary, that the same be then af-  
" firmed." And it was but about 13 years after this answer, that the commons prayed, that every broker of Usury should forfeit all his goods, and the cognizance and punishment thereof were reserved to the church.

Almost every mention, that we find made of the offence or punishment of Usury in our old books or parliamentary records opens some additional reason, why our ancestors under the impressions, that were then generally entertained of the nature of Usury, should leave the cognizance of it to the ordinaries. Thus we see as early as A. D. 1266<sup>2</sup>, the bishops declared competent to enjoin wholesome penance for that sin; that is, to punish live Usurers. "*Ad*

<sup>1</sup> Cott. Ab. Records of the Tower, p. 339.

<sup>2</sup> Rot. Parl. 51. Hen. III, apud Coke, 3 Instit. 151.

“ 16 Art. de Usuris respondetur. Quod licet epis-  
 “ copis pro peccato illo pœnitentiam Usurario injun-  
 “ gere salutarem. Sed quia committendo Usuram,  
 “ Usurarius furtum committit, et super hoc est con-  
 “ victus, catalla et terræ Usurarii, sicut catalla  
 “ furis sunt regis, et si qui voluerint contra hujus-  
 “ modi Usurarium, restituantur eis bona sua, quæ  
 “ ipsi Usurarii per Usuram extorserunt.” And

Bracton, who flourished under this very king, informs us, that it was an article of the charge of inquiry by the justices in eyre. *De Usurariis christianis, qui fuerunt, et quæ catalla habuerunt, et quis ea habuerit.* This enquiry certainly was to be made of dead, not living Usurers. But if Lord Coke be warranted in saying, that many were indited before the justices in eyre for taking Usury, it is to be observed, that they were indited for what, *Usurarii per Usuram extorserunt*: and we have before seen, *that if any man be grieved by extortion, &c.* the laws and customs of the realm shall punish the same.

It appears moreover evident, that from the year 1266 to the year 1486, this jurisdiction of the ordinaries over live Usurers was admitted to belong to them by common law. For when in the 3d of Henry VII an act was passed against Usury, which imposed a penalty of 100l. upon the Usurer, it was thereby particularly declared, that this new punishment should not in any  
 manner



PART I.  
CHAP. II.

The power  
of the spiri-  
tual court  
to punish  
Usury given  
by common  
law.

manner derogate from the powers of the ecclesiastical courts; *reserving to the church (the punishment notwithstanding) the correction of their souls according to the lawes of the same.* And afterwards again in the year 1494 when the 3d of Henry VII was repealed by the 11th Henry VII, c. 8, there was an expresse saving of the ecclesiastical jurisdiction in these words; “reserving alway to the spiritual jurisdiction *their lawful punishments* in every cause of Usury.”

It would be disorderly to enter further at present into any of the effects produced by statute upon Usurers, than to prove by them what the common law concerning Usury was at the time of their passing. I flatter myself it appears as clear to all, as it may appear singular to some, that the crime of Usury though forbidden by common law, was punishable only by the ecclesiastical courts. Such punishments were as much by common law, as any punishments inflicted by the common law courts. “*Mat- ters of ecclesiastical jurisdiction are of two kinds, criminal and civil. The criminal proceedings extend to such crimes, as by the laws of the kingdom are of ecclesiastical cognizance, as heresie fornication adultery and some others, wherein their proceedings are pro reformatione morum et pro salute animæ: And*

<sup>1</sup> Sir M. Hale's Hist. of the Common Law, ch. 11.

“ the

## ON USURY.

77

PART I.  
CHAP. II.

“the reason why they have cognizance of those  
“and the like offences and not of others, as  
“murder, theft, burglary, &c. is not so much  
“from the nature of the offence (for surely  
“one is as much a sin as the other, and there-  
“fore if their cognizance were of offences, *qua-*  
“*tenus contra Deum*, it should extend to all sins  
“whatsoever, it being against God’s law.) But  
“the true reason is, because the law of the land  
“has indulged unto that jurisdiction the cog-  
“nizance of some crimes, and not of others.”

Of this description was Usury: for as by the common law of the land it was looked upon as sinful unjust and repugnant to the law of God, it was obvious, why our ancestors brought it under the cognizance and punishment of the ecclesiastical court: and whatever power and jurisdiction the ecclesiastical judges exercised upon Usurers by coercion *in foro contentioso*, they acquired it all from the common law of the land: for their *pure* spiritual power and jurisdiction are by nature incapable of such external coercive authority.

Singular it is, that the crime of Usury under such violent prepossessions against it, should never have been accurately and precisely defined by any of our early law writers. Though Bracton chiefly flourished under Henry III, he is said to have written his book in the reign of

our

Bracton on  
Usury.

PART I.  
CHAP. II.

our Second Henry, and may therefore be looked upon as cotemporary with Glanville: this work is much more diffuse upon the laws of England, than Glanville's, yet is there less in him upon the subject of Usury. He speaks not of it even as criminal; but then it must be remarked, that he treats of it only as practised by the Jews: whence it appears, that by the common law of England Jews were allowed to lend at Usury (under certain restrictions) and christians were not forbidden to borrow: which furnishes, as I before observed a plain proof, that the practice could not be forbidden by any positive law of God, or otherwise the immediate cause of the offence, as borrowing is, could not be tolerated in any christian country.

“ But a debt of the deceased, which is due  
“ to the Jews shall not carry Usury (Interest)  
“ whilst the heir is under age. And if a Jew's  
“ debt shall have come into the king's hands,  
“ the king shall only take the principal, that is,  
“ the sum specified in the bond or charter.”  
Such was the difference between the Jews and Christians in respect of Usury in our old laws, that I find it necessary to make Judaism by the laws of England the subject of a distinct chapter.

\* Bracton, lib. ii. c. 26. De acquirendo rerum dominio.



Glanville enters much more fully into the nature both of the crime and punishment than Bracton, but does not confine the crime to Jews. Yet it is remarkable, that the sole punishments of the crime, which this author mentions fall upon the heirs and the representatives of the Usurer, not upon the Usurer himself. For says he, *ⁱ Vivus autem non solet aliquis de crimine Usuræ appellari nec convinci*. He informs us however, that upon the death of an Usurer all his goods and chattels belong to the king, and that an inquisition is to be made upon the oaths of 12 jurors, whether the deceased died guilty of the crime. His heir also is disinherited by the law of the land, *hæres autem illius hâc eâdem de causâ exhæridatur secundum jus regni*; and the inheritance reverts to the lord or lords. The rigor of the law, he adds, attaches only, where the person dies actually guilty of the practice: not where before his death he shall have discontinued and done penance for it. The most positive proof therefore was required by the law at this time, that a person died actually (and properly speaking) habitually guilty of Usury, in order to give a title to the king and the reversioner against his real and personal representatives.

<sup>ⁱ</sup> Glanv. Tractat. de Legib. Regni Angliæ, lib. vii. c. 16.

## PART I.

## CHAP. II.

Fleta on  
Usury.

The learned Selden in his *dissertatio in Fletam*<sup>1</sup> proves incontestably against Sir Edward Coke and others, that the author of Fleta wrote under Edward I. and not later. This work is but a more concise account of our laws, than Bracton's: and in many passages a mere transcript from that author; there are however some alterations in the laws to be noticed in Fleta, that took place after the writing of Bracton's treatise. We may remark particularly in Fleta the difference, which the laws in his time established between Usury amongst the Jews and amongst Christians. Of the latter he speaks as of a crime of the most atrocious nature, that induced the forfeiture of all the delinquent's goods and chattels and rendered him outlawed.<sup>2</sup> “*Atrax* “*injuria est, quæ omnium mobilium amissionem con-* “*fert et legem liberam aufert, quæ locum habet in* “*Usurariis christianis.*” But it follows evidently from what this author elsewhere observes, that although amongst Christians Usury were so strictly prohibited and so severely punished by the common law, yet by that same law it was permitted to the Jews, and that upon the legality of Jewish Usury was the statute of Merton formed, which suspended the accruing of interest

<sup>1</sup> C. x. Sec. 2. *Scio quidem viros aliquot nominis magni aliter sentire, &c.*

<sup>2</sup> Fleta, lib. ii. c. 1.

during

during the nonage of the heir to the creditor. This statute, which was passed in the 20th of Hen. III, makes no mention of Jews in the chapter relating to Usury: but speaks of it generally, and engrafts a new law upon an existing usage, viz. the payment of Interest for money borrowed, which it could not do, if such usage were illegal in itself. Now if any other person than a Jew could at that time have legally lent money upon Usury, the author of Fleta, who wrote soon after the passing of this act, would not have so confidently asserted as Bracton had done before him, that the statute related only to the debts of the Jews. For says he, "A debt  
" of the deceased which is owing to Jews shall  
" not carry Interest whilst the heir is under age,  
" by the statute of Merton, which is to this effect<sup>1</sup>." It would be irregular to consider the  
operation

<sup>1</sup> *Fleta, lib. ii. c. 57. Debitum vero defuncti quod debetur Judæis non usurabit vel multiplicabit quamdiu hæres fuerit infra ætatem, per constitutionem de Merton, quæ talis est.* It is impossible for me to reconcile this with what I find asserted in *Sanderson v. Warner* (20 Jac. I. Palm. 291.) where L. C. J. Lea said that the "Usury condemned by the common law  
" was a common traffic of *biting* Usury, such as was practised  
" by the Jews, and were therefore called *Anglicè Judaizantes*,  
" and being thereof indicted forfeited all their chattels.  
" But this Usury under 10 per cent. was not such Usury as  
" was condemned:" and he further adds, that many divines  
G hold,



PART I.  
CHAP. II.

operation of the statute of Merton before I have entered upon the enquiry into the nature of Usury by the statute law : but ere this be attempted, it will be first necessary to examine into the common and statute laws of England concerning the Jews.

hold, that *gripping* Usury only was condemned ; and that one might lawfully demand it of rich, though not of indigent and distressed borrowers. I cannot trace the most distant authentic vestige of any degree of Usury being allowed by common law except to the Jews. And it appears not improbable that the jurisdiction of the ecclesiastical court over live Usurers was supposed to be confined to mere Jewish Usurers : but where Christians became Usurers the common law courts might take cognizance of it. As in this very case it was stated by council (293) that there were many commissions granted in the days of Edward I. to enquire amongst the laity, who were *Christianè Judaizantes*, i. e. as I conceive, what Christians were guilty of Usury, and there were many indictments for it and pardons granted, provided they would take no more Usury ; and there was cited a precedent of one, who was indicted for Usury and punished and the record was in the court of King's Bench by *certiorari*. Hill. 16. Ed. III. Rot. 28. All which shews that the spiritual court had not the exclusive cognizance and right of punishing all sorts of Usury whatever.

## CHAP. III.

OF THE JEWS AND JUDAISM BY  
THE LAWS OF ENGLAND.

## CONTENTS.

*Of the Introduction of Jews into England—Observations upon their State of Vagrancy—Of the first Law concerning them in England—Nature of Laws concerning Religious Belief—What was Judaism by the Laws of England—Prejudices of our Historians against the Jews—They acquired a Settlement under Richard I.—New Laws for the Jews : they were governed like a Corporation by Bye-laws—Oppressed by Hen. III.—His Prerogative checked by Parliament's appointing a Judge over the Jews—Nature of the Crimes imputed to the Jews—Henry III's Reasons for oppressing the Jews—Statute de Judaismo—Lord Coke's Comment upon it—Prynne's Difference from Lord Coke about the voluntary Banishment of the Jews—It appears to have been compulsory by Parliament—Alteration of the Laws concerning the Jews—For the last 505*

*Years no other Acts passed concerning the Jews  
but such as are beneficial.*

PART I.  
CHAP. III.

Of the introduction  
of the Jews  
into Eng-  
and

THE precise time of the first introduction of the Jews into England is not ascertained. Both Hollinshed <sup>1</sup> and <sup>2</sup> Stow attribute their introduction to William the Conqueror. Others imagine, that there were considerable settlements of Jews in the times of our Saxon ancestors, because Hoveden <sup>3</sup> and <sup>4</sup> Spelman have placed the following law concerning the Jews amongst the laws of Edward the Confessor. It is not however to be found in the collection of those laws made by the abbot Ingulphus <sup>5</sup>, who flourished in that age, was present at their confirmation and brought them to the abbey of Croyland; nor yet in Brompton <sup>6</sup>, who would scarcely have omitted to mention such a law, had it then existed. And their omission of it has appeared to the learned Mr. Selden <sup>7</sup> and Mr. Prynne <sup>8</sup> to be conclusive evidence of it's

<sup>1</sup> 3 Vol. p. 15.

<sup>2</sup> Annals, p. 103.

<sup>3</sup> Rog. Hov. Annal. pars posterior, p. 604.

<sup>4</sup> Spelm. Concil. 623.

<sup>5</sup> Ingulph. Hist. p. 914.

<sup>6</sup> Chronicon Joan. Brompton, 956.

<sup>7</sup> Notæ in Eadmerum, p. 172 to 195.

<sup>8</sup> Pref. to Prynne's Short Demurrer to the Jews.



non-existence in the days of Edward the Confessor, and of it's interpolation by Hoveden and some other more recent writers amongst the laws of that king. It is however the earliest written document I can trace of the positive law of the land concerning the Jews. Mr. Prynne<sup>1</sup> is of opinion, that this law mentioned by Hoveden, was rather a declaration of the Jews servile condition under King William and Richard I, when Hoveden wrote, than any law in King Edward's reign, or before as the words import<sup>2</sup>. Certain however it is, that this law, whenever or by whomsoever it was made or published

<sup>1</sup> Short Dem. p. 3.

<sup>2</sup> It is no conclusive inference, that because there were no laws concerning the Jews, therefore there were no Jews settled in England, before the time of passing the law: but on the contrary the subsistence of the law necessarily imports the pre-existence of the objects, upon which the law was to operate. Thus for some centuries before the reigns of Edward and William the Norman we may trace instances not only of the establishment, but of the opulence and liberality of the Jews in this country. For in a charter of Witglaff king of Mercia, who reigned 14 years and died A. D. 739 (or according to others 737,) made to the monks of Croyland, we find confirmed to them not only the royal grants to that abbey by the Kings of Mercia, but all such lands as had been given to them by Christians or Jews. *Omnes terras et tenementa possessiones et earum peculia, quæ Reges Merciorum, et eorum proceres, vel alii fideles Christiani vel Judæi, dictis monachis dederunt.* And still earlier than this, the Jews must have been

PART I.  
CHAP. III.

First law  
concerning  
Jews in  
England.

published was declaratory of the common law and not introductory of a new law.

*De Judæis in Regno constitutis*<sup>1</sup>.

“ Sciendum est quoque, quod omnes Judæi  
“ ubicunque in regno sunt, sub tutelâ et defen-

“ sione

numerous in England, since the 146th paragraph of the Canonical Excerptions published by Egbricht archbishop of York in 740 forbids any Christians to be present at the Jewish feasts. From the preface to Leland's collection it appears, that Mr. Richard Waller believed the Jews to have been settled in this country from a still earlier period, viz, the supremacy of the Romans in Britain. He grounds his opinion upon the discovery within this century of a Roman brick, which was the key of an arched vault found full of burnt corn in Mark-lane London. It had on one side a bas-relief representing Sampson driving the foxes into a field of corn: and from the elegance of the sculpture and other criteria, it was inferred, that this brick could be no work of latter ages, and if of Romans, of Roman Jews from the subject. Vid. 1 vol. of the Monthly Magazine, which contains three very instructive papers relative to the Jews in England.

<sup>1</sup> Many circumstances concur to draw our peculiar attention to the establishments of the Jews in different nations. Their dispersion over the face of the earth after the destruction of their temple and the extirpation of their commonwealth and their continuance in this state of vagrancy to the present day are urged by most of our writers as standing evidences of Christianity: and certain it is, that if, as most Christians believe (Mr. Prynne did not) there will be a general calling and conversion of the Jews to the faith of Christ before the end of the world, it seems necessary, that they should have separate settlements in different nations, to keep them

“sione domini regis sunt; nec quilibet eorum  
 “alicui diviti se debet subdere sine regis licentiâ.  
 “Judæi et omnia sua regis sunt. Quod si  
 “quispiam detinuerit eis pecuniam, perquirat  
 “rex suum proprium.” (or as Sir Henry Spelman renders it “detinuerit eos, vel pecuniam  
 “eorum perquirat rex si vult, tanquam suum  
 “proprium).”

PART I.  
 CHAP. III.

This absolute dominion of the king in all the property of the Jews seems strongly to favour the idea of the Norman William's having brought over many of them at least from

William's  
 despotism.

them as a distinct and particular people: otherwise by natural means they must long since have been incorporated with, and thus have become extinguished in the nations, in which they resided. And if there be truth in the imputation of more art cunning and self-interest to the Jews than their neighbours, the disgraceful harsh and cruel treatment they have generally received in all christian nations would naturally also operate to make them drop their distinctive marks, as the sure badges of oppression and persecution. Most nations then must have had Jewish establishments amongst them. The Jews appear to me not only to have retained their religious opinions, but also their old and characteristic spirit of enterprize and consequently of emigration: for even at a time when the universe was buried in idolatry, and the Jews were by law obliged to assist at their annual solemnities at Jerusalem, we find (Acts ii. 5.) that at the feast of Pentecost there were assembled Jews, *out of every nation under heaven*. Yet their usages laws and religion being temporary and local tended to check emigrations more than those of any other nation of the earth.



PART I.  
CHAP. III.

Rouen, perhaps under this condition of the most abject slavery. So unusual a prerogative in the crown and such unqualified slavery in the subject could not have arisen by gradual progression out of the spirit of the common law of England, if no traces of the very objects of the law were discoverable before William's days: and the whole of this law is peculiarly congenial with the character and disposition of this despotic invader. Thus stood the common law of England for a considerable time as to the Jews. The Magdeburg centuries<sup>1</sup> mention, that when William translated the Jews from Rouen to England, he did it *ob numeratum pretium*: and it is highly probable, that this prince gave the example to his successors of turning this slavish dependence of the Jews to fiscal advantages, whenever the exigency or temptation arose. Little surprising then was it, that the Jews, who purchased this state of oppression and bondage at so dear a rate from the Sovereign, should indemnify themselves by reprisals upon his subjects. Thus the opulence of the Jews, which fed the profligacy and avarice of our princes, increased and multiplied the extortions upon the people and engendered that universal execration, in which the Jews for a long series of years were had by this nation.

<sup>1</sup> Cent. xi. cap. 14. col. 686.

We have seen that Usury by the common law of England was allowed of in the Jews, when it was prohibited and punishable amongst Christians: we must also remark, that how high soever the prejudices against Usury ran in the christian world, it was an usage expressly permitted by God to the Jews in their dealings with strangers. Now it is a principle destructive of civil liberty, repugnant to the spirit of christianity and necessarily productive of religious persecution to presume the profession and practice of any religious distinction of human beings to be obstinately erroneous. It is essentially necessary, that in point of religious belief every Christian should differ from every Jew. But in as much as the true faith of a Christian consists in the submission of the understanding to many revealed mysteries, which surpass the intuitive and comprehensive powers of the human mind, it is evident, that this internal and not wholly voluntary affection of the mind cannot like external conformity be ensured by the coercion of the *civil magistrate*. Glaring indeed are the evidences of Christianity to every reflecting Christian: yet the adoption of it must be free, as coming by persuasion only, *fides ex auditu*. Now as the civil magistrate cannot possibly ascertain *the particular time* (if ever), at which a Jew is persuaded or convinced of the truth of Christianity,

PART I.  
CHAP. III.

Nature of  
laws for  
coercing re-  
ligious be-  
lief.

PART I.  
CHAP. III.

Christianity, he cannot consequently punish him for neglecting to follow the conscientious convictions of his mind, and till he has been guilty of this neglect, he is not culpable of any moral offence to his Creator by professing the Jewish religion. Every law therefore directly penal merely for professing the Jewish religion is in it's nature unjust and formally antichristian.

Judaism by  
the laws of  
England.

*Judaism* as an object of the common law of England, consisted in the profession and exercise of the Jewish laws rites and ceremonies. The offence, which was punishable by the common law was not the denial of Christianity; otherwise every heathen infidel or mahomedan would be equally objects of the rigor of the law with the Jews, which was not the case. It was truly therefore said, that *Jew is a name of profession not of country or nation*<sup>1</sup>. Nor ought we to consider a Jew, in as much as he is obnoxious to or punishable or affected by the common law in the light of an *alien*; for all the disabilities of alienage are common to all persons indiscriminately born out of the ligeance of his majesty, without reference to any religious or political opinions professions or practices whatsoever. In investigating our laws concerning the Jews it behoves

<sup>1</sup> Molloy de Jure Maritimo, lib. iii. c. 6. Of the Jews. He quotes Jos. Scalig. ex quo Casaubon adv. Baron. p. 19 and 39.



me to bear up with unremitted exertions against the stream of prejudice, through which our early writers have transmitted to posterity their documents upon this subject<sup>1</sup>. There are at this day many persons within the dominion of his majesty

PART. I.

CHAP. III.

<sup>1</sup> The extreme and rooted hatred which this nation uniformly bore to the Jews appears from the bitterness, with which all our early writers speak of them on all occasions: nor does there appear to have been an outrage committed upon the Jews, which they do not palliate justify or commend. The horrid inhuman and impious usage of crucifying a christian child in derision of our blessed Redeemer is reported to have happened in London at Norwich Bury St. Edmonds and Lincoln: but as the particular perpetrators of these crimes do not appear to have been judged condemned or punished for them, and our early historians report that these offences were avenged in the Jewish blood, that was shed by popular fury without the forms of trial by judge or jury, it becomes rather suspicious, that these reports of crucifixions were circulated to give a colourable pretext to the most inhuman massacres of the Jews from very different motives, than those which could be drawn out of the meek spirit of Christianity. Henry of Knyghton (De Eventib. Ang. l. ii. c. 13.) speaks without reserve. "The zeal of the Christians conspired against the Jews in England, but in truth, *not sincerely*, that is not for the cause of *faith*, but either out of emulation and envy because of their felicity, or out of gaping after their goods: the justice truly of God not at all approving such things, but decently ordering them, that by these means he might punish the insolency of a perfidious nation." The bloody slaughters, the wanton executions and final banishment of the Jews out of the nation are related by our historians with an exultation

PART I.  
CHAP. III.

majesty making profession of the Jewish religion, who enjoy respectable characters, and have staked very large interests in the fate of the British empire: they are therefore entitled in common

exultation disgraceful even to humanity. This hatred of the Jews seemed deeply rooted in the national character. For notwithstanding the predominancy, which Oliver Cromwell at one time commanded over the nation and the fiscal difficulties he then laboured under, he was constrained by the public outcry to reject the offer of 200,000*l.* made by the Jews for a grant to rebuild St. Paul's church in London for a synagogue and some other advantages in the state. Upon this occasion William Prynne to feed the flame of hatred to the Jews published the before-mentioned book called a Short Demurrer, &c. in which, with much more bitterness, than candour, he has raked out of those vast funds of knowledge he so eminently possessed whatever the most prejudiced and envenomed of our writers have invented or imputed to the Jews. "*I have omitted,*" says he in his Preface, "*no passage to my knowledge in any of our historians relating to our former English Jews.*" And yet, as truth will penetrate the densest cloud of prejudice or malice, we perceive by this author's own words and reasons, that these very English Jews were more sinned against than sinning: for amongst other reasons for their non-readmission into England he has urged the following: (p. 52.) "That the Jews themselves have little cause or reason at all to replant themselves in England, where their ancestors in time past sustained so many miseries, massacres, affronts, oppressions, fleecings upon all occasions, and themselves can expect little better usage for the future." This appears a tolerably fair testimony from an avowed enemy of the injustice, that the English Jews formerly suffered from our Christian ancestors.

with

with all other natural-born subjects to the full participation of all the advantages of the state and to the confidence and attentions of their fellow-subjects. There are indeed some advantages in the state, from which the Jews are now shut out by their refusal to comply with the sacramental test<sup>1</sup>: but this is a hardship felt in common by every British subject, (of which there are many millions,) who cannot from conscientious motives enrol himself a member *and sincere believer* in all the doctrines of the church of England.

So vague and intemperate are the early historical accounts of the punishments inflicted upon the Jews, that it is impossible to infer from them, what were their crimes or their punishments by the regular law of the land. Hollinshed<sup>2</sup> and some other historians inform us, that William Rufus was a great favourer of the Jews both at Rouen and in England. Several of our early historiographers such as John Brompton, Henry of Knyghton, Richard Grafton, Gervase of Dover and Ralph Hollinshed report in the most impassioned terms their annual crucifixions of Christian children and other barbarities.<sup>3</sup> "But," says William Prynne the declared enemy of the

Partial accounts of the Jews.

<sup>1</sup> Vide my *Church and State*, lib. iii. cap. iii. *per totum*.

<sup>2</sup> Chron. 3d vol. p. 27.

<sup>3</sup> Short Dem. p. 7.

Jews,



PART I.  
CHAP. III.

Jews, " what punishments were then inflicted on  
 " them for these murders and insolencies, I find  
 " not recorded : " (a very probable circumstance  
 that such criminals should have gone off with  
 impunity had they really been guilty) " per-  
 " haps they purchased their peace with monies.  
 " For I read, that in the year 1168 <sup>1</sup> *King Henry II.*  
 " *wanting monies banished the wealthiest of the*  
 " *Jews out of England and fined the rest of them in*  
 " *5000 marks* most likely for these misdemeanors."

Besides the last-mentioned historians, William of  
 Nurimbergh, Matthew of Westminster, Mat-  
 thew Paris, Roger Hoveden, Hygden Fabian,  
 Stow, Speed, Fox, Daniel and others give an  
 account, which can therefore scarcely be doubt-  
 ed, of a general massacre of the Jews at the co-  
 ronation of Richard I. (A. D. 1189.) merely be-  
 cause some few of the genteeler sort had through  
 curiosity mixed with the company, that frequent-  
 ed the church and the palace on that festive oc-  
 casion. Although Henry of Knyghton be sus-  
 pected by some of dealing more in the marvellous  
 and deviating more easily from truth than some  
 of his cotemporary writers, yet he appears to be  
 more critical in his observations upon the facts  
 generally allowed of, than any of them. Upon  
 this popular butchery of the Jews he most judi-

<sup>1</sup> Gervaf. Derob. Chron. Col. 1403.

ciously remarks, that the rage and fury of the Christians was too general to be punished: *propter reorum tamen infinitam multitudinem dissimulari oportuit, quod vindicari non potuit.*<sup>1</sup>

The original law, which gave all the property of every Jew to the King, *Judæi et omnia sua Regis sunt*, from its excess of rigor and injustice was probably found to defeat it's own purpose. Wherefore as the sole principle of our prince's conduct towards the Jews was to render them an efficient source of revenue, King Richard upon his

Jews acquire  
a legal settle-  
ment in  
England.

<sup>1</sup> Little warrantable is it to affix, as the modern fashion is, an inseparable spirit of intolerance and persecution to the church. We have on this occasion a notable instance of the reverse. King Richard on the morning after his coronation sent his officers into the city to enquire into the causes of the riots and massacres of the preceding day. They apprehended three malefactors, who were Jews and accused of having stolen the goods of Christians, and set fire to their houses: and they were immediately hanged by judgment of his court. Another Jew had out of fear received Christian baptism, which when he had acknowledged the King interrogated him before several archbishops and bishops and applied to them to know how he should be punished. They very justly adjudged him to be set at liberty, if he chose to return to Judaism: yet that judgment is reported to have been made in the harshest terms, *If he will not be a man of God, let him be a man of the Devil.*

It was probably in consequence of this opinion of the bishops, not to persecute and punish the Jews, that the King very soon after sent his writs throughout all the counties of England,

PART I.  
CHAP. III.

New laws  
concerning  
the Jews.

his return from the Holy Land and after the expenditure of an immense treasure upon the crusade appears to have turned his thoughts towards settling and improving the establishment of the Jews in this realm. We accordingly find the laws passed under his reign concerning the Jews fully recorded by Roger Hoveden though but briefly touched upon by other authors.

<sup>1</sup> "All the debts pauns mortgages lands houses rents and possessions of the Jews, shall be registered. The Jew, who shall conceal any of these shall forfeit to the King his body and the concealment and likewise all his possessions and chattels: neither shall it be lawful to the Jew ever to recover the concealment. Likewise 6 or 7 places shall be provided, in which they shall make all their contracts and there shall be appointed two lawyers that are Christians, and two lawyers who are Jews, and two legal registers; and before them, and the clerks of Wil-

land, prohibiting, that none should do any harm to the Jews, but that they should enjoy his peace. These royal edicts or proclamations produced not their desired effect. For Fox (*Acts and Monuments*, Vol. I. p. 305.) after the Chronicle of Westminster, says, *that there were no less than 1500 of the Jews destroyed at that time in York alone (besides those slaughtered in other places) so that this year, which the Jews took to be their jubilee was to them a year of confusion.*

<sup>1</sup> Annal. pars posterior, p. 745. Chron. Joan. Brompton. Col. 1258. Hollinshed. Vol. III. p. 155.

" Liam



" liam of the church of St. Marie's, and William  
 " of Chimilli, shall their contracts be made : and  
 " charters shall be made of their contracts by  
 " way of indenture. And one part of the inden-  
 " ture shall remain with the Jew sealed with his  
 " seal, to whom the money is lent ; and the  
 " other part shall remain in the common chest,  
 " wherein there shall be three locks and keys,  
 " whereof the two Christians shall keep one key,  
 " and the two Jews another, and the clerks of  
 " William of St. Marie's church, and William  
 " of Chimilli shall keep the third. And more-  
 " over, there shall be three seals to it ; and those  
 " who keep the seals, shall put the seals thereto.  
 " Moreover the clerks of the said William and  
 " William, shall keep a roll of the transcripts of  
 " all the charters ; and as the charters shall be al-  
 " tered, so let the roll be likewise. For every char-  
 " ter there shall be three pence paid, one moiety  
 " thereof by the Jew, and the other moiety by  
 " him, to whom the money is lent ; whereof the  
 " two writers shall have two-pence, and the keeper  
 " of the rolls the third. And from henceforth  
 " no contract shall be made with, nor payment  
 " made to the Jews, nor any alteration made of  
 " the charters, but before the said persons, or the  
 " greater part of them, if all of them cannot be  
 " present. And the aforesaid two Christians shall  
 " have one roll of the debts or receites of the

H

" payments

PART I.  
CHAP. III.

“ payments which from henceforth are to be  
 “ made to the Jews, and the two Jews one, and  
 “ the keeper of the roll one. Moreover, every  
 “ Jew shall swear upon his roll, that all his debts  
 “ and pauns and rents and all his goods and  
 “ possessions he shall cause to be enrolled, and  
 “ that he shall conceal nothing, as is aforesaid.  
 “ And if he shall know, that any one shall con-  
 “ ceal any thing, he shall secretly reveal it to  
 “ the justices sent unto them : and that they  
 “ shall detect and shew unto them all falsifiers  
 “ or forgers of charters and clippers of moneys,  
 “ where or when they shall know them, and  
 “ likewise all false charters.”

Jewish Re-  
gister.

Whilst this register, which was called the *Shetar*<sup>1</sup> (and afterwards corruptly *Star*) Chamber existed, there were many laws concerning it, which it would be now mere matter of curious research to investigate. By these laws, the real and personal property of every Jew became known to the King and his officers, and was consequently open to confiscation seizure or forfeiture, as their guilt or accusations afforded occasion. During the weak and disgraceful reign of King John, the Jews obtained two royal grants

<sup>1</sup> *Shetar* is a Hebrew word signifying a deed or contract, and being abbreviated into one syllable affords a ready account of the sound and import of the word *Star*.

or charters<sup>1</sup> to confirm their liberties; that is, their possession of property and their right to be generally adjudged (except in certain heinous crimes) by their own judges and tried by a jury of six Christians and six Jews. Sir Edward Coke, who writes with more acrimony and prejudice, than any of our law writers, says: "But lucre  
 "and gain, which King John had and expected  
 "of the infidel Jews made him *impiè judaizare*.  
 "For to the end, they should exercise the laws  
 "of their sacrifices (which they could not do  
 "without a priesthood) the King by his charter  
 "granted them to have one, &c."<sup>2</sup> and accordingly appointed Jacob of London high pontiff of all the Jews in England. Notwithstanding this grant, Prynne tells us, <sup>3</sup> "That King John  
 "some years after commanded all the Jews of

<sup>1</sup> For these two charters vid. App. No. III.

<sup>2</sup> Sir E. Coke, 2 Instit. p. 508. For the instrument vid. App. No. IV.

<sup>3</sup> Short Demurrer, p. 16 and 17. In confirmation of what he asserts, he quotes *Mat. Westm. An.* 1210. *Mat. Paris Hist. Ang. Londini* 1640. p. 229. *Hollinshed Vol. III.* p. 174. *John Stow* p. 168. *Daniel* p. 115. He also favours his readers with the tale of the Bristol Jew, who having but eight teeth in his head had submitted to the King's inhuman commands for extracting one of them daily to extort money from him, which the tortured Jew consented to give on the seventh day, rather than lose his eighth and last tooth.



PART I.  
CHAP. III.

Jews a species of corporation governed by their bye-laws.

“ both sexes to be apprehended and imprisoned  
“ and to be afflicted with most grievous tor-  
“ ments, that so they might satisfy the King’s  
“ pleasure with their money.”

Whilst the Jews remained thus settled in England, they formed a species of corporation governed amongst themselves by their own *bye-laws*. The learned Selden<sup>1</sup> informs us, that by the laws of England, if a man died leaving issue divers sons, the lands descended to the eldest: but a Jew dying leaving issue divers sons, after the fine paid to the King, they all inherit lands goods and chattels in a kind of coparcenary. So likewise by the law of the realm if a Jew died seized of lands his wife could not by the common law bring a writ of dower, &c. It surprises me not a little, that Sir Edward Coke, Prynne and Molloy and most other compilers and digesters of our laws affecting the Jews should seem to have made it their sole object to collect and transmit it to posterity whatever laws at any time existed concerning the Jews, without discriminating the times conditions or occasions of the laws they speak of: whence it is not unfrequent to meet with grave quotations of laws diametrically contradictory of each other, as if they were co-existing and co-operative.

<sup>1</sup> De Successionib. apud Hæbræos, (c. 20.)

Thus

Thus for instance, I conceive, that whilst the law *Judai & omnia sua Regis sunt* subsisted, if a Jew by permission or sufferance of the Crown continued in the possession and use of his property during his life, yet at his death, his whole estate both real and personal escheated to the King. When by the abolition of this first law the Jews were enabled to possess property in their own right, they became also enabled to transmit it to others, who were also capacitated to take: this only happened, when, as Selden says, that law peculiar to themselves was passed, whereby *they all inherited lands goods and chattels in a kind of coparcenary*. Lands can only escheat to the Crown for want of an heir; but where the law casts the descent of the lands upon one or more after the death of an ancestor, there can be no want of an heir as is self-evident: these two laws could not therefore be co-existing at one and the same time. Our law only knows two sorts of incapacities to transmit and take, (except the civil death contracted by religious vows, which it now no longer recognizes): one arises from alienage; the other is affected by attainder. The Jew therefore who could by law transmit, and the Jew who could by law take from his ancestor, was not liable either to the incapacity of the attainted or the alien.

PART I.  
CHAP. III.Singular law  
of converted  
Jews.

Molloy informs us, that *if they turned Christians, they immediately upon their conversion forfeited all their estates to the Crown.* If such a law ever existed, it can only be accounted for upon the presumption that all the property of the Jews was acquired by Usury, which was unlawful for a Christian to practise and therefore the fruits of it were forfeited to the King as *pretium iniquitatis*, or as the restitution of stolen goods, which every penitent robber is obliged to make, according to what was said in the second chapter of the property of an Usurer being considered, as *catalla furis*. It is singular, that Molloy, a very discriminating and judicious writer, should have made so extraordinary an assertion without quoting any authority for it. Hollinshed<sup>1</sup> reports that William Rufus when at Rouen accepted a sum of money from several Jews to oblige some converts to Christianity to return to Judaism; which when they refused to do, the Jews re-demanded their money, and the King insisting upon his having complied with the condition of obliging them as far as he could to return to the Jewish religion, the affair was compromised: William retained one half and returned the other half of the money to the Jews.

<sup>1</sup> Chron. Vol. III. p. 27.



PART I.  
CHAP. III.Statute of  
Merton af-  
fected only  
Jews.

In the last chapter I observed, that the fifth article of the statute of Merton was passed upon the ground of the legality of Jewish Usury: the suspension however of the Interest during the minority of the heir to the borrower, was an alteration in the laws affecting the Jews, which it is orderly here to notice. This statute passed A. D. 1235, in the 20th year of Henry III: and although it make no express mention of Jews, yet it could only affect them and their debts, for money could not then legally be lent by a Christian at Interest: and a law could not be grounded upon an illegal basis. What further observations are to be made on this statute, must be deferred to the next chapter.

Notwithstanding the Jews now seemed to have acquired some legal security and protection to their property, yet if we may credit our early historians, who were little disposed to favour them, this monarch exercised as arbitrary a dominion over the Jews in the tenth year of his reign, as any sovereign could have done whilst the law was in force, that *Judæi & omnia sua Regis sunt*. For without any charge or pretext of offence, he constrained the Jews, whether they would or not, to give him a third of all their moveable goods at one time<sup>1</sup>. Nay such was

Injustice of  
Hen. III.  
towards the  
Jews.

<sup>1</sup> Mat. Paris, Hist. Ang. p. 365. Mat. Westm. p. 128. Holl. p. 221.

PART I.  
CHAP. III.

Parliamentary control  
over the  
royal prerogative.

the rapaciousness of this monarch towards the Jews, that Matthew Paris (p. 605.) gives fresh details of his extortions from them in the year 1243 : and from one of them in particular Aaron of York he extorted four marks of gold and 4000 marks of silver. So meanly voracious was this monarch of the treasure of this persecuted and oppressed people, that he condescended to receive the gold with his own hand from every Jew man or woman ; being made as it was observed at the time of a King *a new receiver of customs*, but the silver was received by others for the King. The tyrannical apathy of this Christian monster was surely, but little short of that of Nero chuckling at the flames of Rome. It appears highly probable, on account of the excessive injustice and cruelty of this King towards the miserable Jews, that in the year 1244 the Parliament interfered and put a check upon the pruriency of the royal prerogative in this particular. For says Mat. Paris (641) the Barons in Parliament ordered, that there should be one justice at the least appointed for the Jews, *by the nomination of the Parliament*. In this instance we see carried into effect one of the leading principles of our constitution, which is a parliamentary jealousy of the royal prerogative and the actual control of the exercise of it, when it tended to aggravate the burthens of the people or render the feelings of

of the monarch callous to the sufferings of his oppressed subjects.

PART I.  
CHAP. III.

Nature of  
the crimes  
imputed to  
the Jews.

To the appointment of this parliamentary judge over the Jews may be attributed the silence of our historians upon this subject for eight or nine years: it being to be presumed, that the royal extortions were during that time checked or prevented. However about the year 1253 they resume their old theme of the King's merciless extortions and oppressions of the Jews. Matthew Paris a cotemporary writer, and consequently impressed with the public spirit of hatred to the Jews, is more diffuse and perhaps more to be credited than any other author, when he relates the sufferings of the Jews, whatever credit is to be given to his accounts of their crimes. The nature of their crimes, was the general privity and consent of all the Jews throughout England to the annual crucifixions, of a Christian child, as a paschal offering in derision of our blessed Lord; supplying the Tartars with arms concealed in barrels for enabling them to destroy their Christian enemies, and destroying by a poisoned beverage many nobles of the land. The proofs of these charges rested solely upon the confession of two Jews: the first, whose name was *Copin* was examined by Sir John Lexington, who before his examination thus addressed him: "O wretch  
" knowest thou not, that speedy destruction  
" abides



PART I.  
CHAP. III.

“ abides thee ! All the gold of England will not  
 “ suffice for thy deliverance or redemption.”  
 He then offered him his pardon and freedom, if  
 he would avow the crimes with which the whole  
 body of the Jews was charged. <sup>1</sup> “ Where-  
 “ upon,” says Prynne after the more ancient  
 authors, “ this Jew believing that he had thus  
 “ found out a way of escape answered; ‘ Sir  
 “ John, if thou make good thy words by thy  
 “ deeds, I will reveal wonderful things unto  
 “ thee,’ &c.” When this learned knight had  
 thus extracted from the Jew, whatever his hopes  
 or fears prompted him to disclose or avow, he  
 was assured that his crimes were too heinous to  
 be pardoned. <sup>2</sup> “ And when as he had spoken  
 “ these things together with other dotages being  
 “ tied to a horse’s tail and drawn to the gallows,  
 “ he was presented to the ærial cacodæmons  
 “ in body and soul; and 91 other Jews parta-  
 “ takers of this wickednesse being carried in  
 “ carts to London, there were committed to  
 “ prison, &c.” The other Jew, who disclosed  
 the crime of poisoning the drink, was one Elias  
 Bishop, in whose house the liquor was poisoned;  
 he turned Christian on Christmas-day 1259 and  
 was not punished. For Matthew Paris says of  
 him, <sup>3</sup> “ But then he was a devil, but now

<sup>1</sup> Prynne’s Demurrer, p. 27.

<sup>2</sup> P. 28.

<sup>3</sup> Hist. Ang. p. 990.

“ thoroughly

"thoroughly changed, and a Christian: and as  
"the condition, so the operation is changed."

PART I.  
CHAP. III.

Jews oppressed  
by the  
Barons.

It would exceed my plan to detail all the oppressions and grievances which the Jews are reported to have undergone after this time not only from the King, but also from the barons. When Henry III had so drained and exhausted their resources, their high priest Elias pleaded to him in person their absolute inability to furnish any further supplies to the royal treasury and demanded a safe conduct and to be permitted to quit the kingdom, leaving to him all their houses and furniture, which he refused. And then as Prynne expresses it (p. 26.) "Being  
"made another Titus or Vespasian, he sold the  
"Jews for some years to Earl Richard his brother, that those whom the King had excoriated, he might eviscerate." It appears, that there was, as little reason as moderation in the oppressions which the unfortunate Jews underwent in this reign. John Stowe informs us<sup>1</sup>, that in the year 1262 about the 47th year of the reign of Henry III, "The barons of England robbed and slew the Jews in all places:  
"there were slain of them in London to the  
"number of 700; the rest were spoiled and  
"their synagogues defaced. The original occasion of which massacre was, because one

<sup>1</sup> Chron. p. 210. Vid. also Hollinshed, 3 vol. p. 263.

"Jew

PART I.  
CHAP. III.

Reason of  
Henry's  
covetousness  
to the Jews.

“ Jew had wounded a Christian man in London,  
“ within Colechurch and would have enforced  
“ him to have paid more than two-pence for the  
“ Usury of 20s. for one week <sup>1</sup>. ”

Having had occasion to attribute so much  
cruelty and injustice towards the Jews to our  
Third Henry, it may be thought an act of candor

<sup>1</sup> Dr. Wilson says, (fo. 198.) “ The Jewes had license  
“ from the King to take two-pence in the pound, for the  
“ week's lending which is 40l. and more by the year upon  
“ the 100l. A develish Usurie no doubt, and worthie of all  
“ death without all peradventure. And great pitie, that any  
“ prince should ever yeelde to suffer anie such spoile or theft  
“ amongst good subjects.” This rate of Interest certainly  
appears very exorbitant ; and yet if we reflect upon the ad-  
vantage, which may result to low retailers of perishable com-  
modities, such as fruit, fish, vegetables, &c. from the weekly  
accommodation of 20s. we may easily conceive how ready  
they would be to pay two-pence on the Saturday night for  
the loan of 20s. which may have enabled them to purchase  
these commodities and gain a livelihood by the retail of  
them. The King's license was probably grounded upon this  
minute view of such loans : not upon the more enlarged scale  
of loans at 40 per cent. per annum generally. There is a  
current belief, that no very remote ancestor of a peer of a  
neighbouring kingdom amassed his fortune by supplying the  
cryers and retailers of such wares in London streets with 20s.  
and a wheel-barrow on Monday morning, on condition of  
their returning the barrow with a guinea on Saturday night,  
which profit amounts to nearly 300l. per cent. per annum.  
And yet was this industrious money gainer *no Jewish*  
Usurer : nor as yet, *catalla et terre Usurarii, sicut catalla*  
*furis sunt Regis.*



to submit to the reader the apology, which his cotemporary historians have put into his mouth.

“ ‘It is no marvel, if I covet money, it is an

‘ Mat. Paris, p. 902. Vid. also Mat. Westminster, p. 270. Holl. vol. iii. p. 252. and Prynne’s Demurrer, p. 25, 26. Some instructive reflection arises out of the peculiarities of this monarch’s reign. All our historians concur in commending him for his external piety and personal chastity: they all agree in attributing to him a character naturally irritable, even to violence: but being wholly under the control of his advisers, he was almost in the habit of rejecting and persecuting his staunchest friends, and caressing and encouraging his bitterest enemies. He saw unmoved the greatest discontents of his people at his lavishing the favours of government upon others than his English subjects, and he persisted so long in his marked partiality to these deceitful and overbearing favourites, that he drove his native subjects and natural friends into open rebellion. He was goaded on to these extremities by the intemperate counsels of several of his clergy, particularly of the bishop of Winchester. We must however remark at a time, when the whole royal treasury or revenue was at the exclusive disposition of the Sovereign, that his filial affection for his heir apparent Prince Edward was such, that he allowed him an establishment of 150,000 marks, which sum in those days was nearly equal to a million of money at it’s present value. It is also observable, that the whole of his debt which he was distressed to pay, did not double the yearly amount of his son’s establishment. He bewailed his want of means to continue it: but cast neither debt nor blame upon his son: and stood forth as an indulgent and tender father the debtor to the nation for the prince. He was at times sensible of his follies; but wanted resolution to discard and punish those malicious and weak counsellors, who had nearly reduced the state to irreparable ruin.

“ horrible

PART I.  
CHAP. III.

“horrible thing to imagine the debts, wherein  
 “I am held bound. By the head of God, they  
 “amount to the sum of 200,000 marks, and if  
 “I should say of three, I should not exceed the  
 “bounds of truth. I am deceived on every  
 “side, I am a maimed and abridged king, yea,  
 “now but an halfed king. For having made  
 “a certain estimate of the expences of my  
 “rents, the sum of the annual rent of Edward  
 “my sonne amounts to above 150,000 marks.  
 “There is therefore a necessity for me to live of  
 “the money gotten from what place soever,  
 “from whomsoever, and by what means  
 “soever.”

Statute de  
Judaismo.

I do not find it clearly ascertained by any author in which year of King Edward's reign the statute *de Judaismo* was passed: it is said by Sir Edward Coke <sup>1</sup> to have been made in the  
 18th

<sup>1</sup> 2 Instit. 506. Vid. the statute as translated out of the French by William Prynne. *Appendix No. iv.* It is printed in French in Tottle's *Magna Charta* A. D. 1556, part 2. fo. 58, 59, and also in Ruffhead's *Appendix* to his *Statutes*, where it is said to be *incerti temporis*. It is not to be inferred, because these ancient statutes deviate from the usual form of modern acts of parliament, which always express the advice and consent of the lords and commons, that therefore such advice and consent were wanting to them. It is a fundamental principle of the English constitution that the King can pass no law without such consent; and the consent presupposes the advice. In these early days,  
 even

18th year of his reign (A. D. 1290.) And this same author has given us a short comment upon this act, or rather some desultory reflections upon the preamble of it; for says he, "I will leave the reader to peruse the residue of this act, which is worthy to be read and needeth not any exposition." (509). The two mischiefs, which Sir Edward Coke says, were to be remedied by this act were, first, "the evils and disherisons of the good men of the land. Second, that many sins or offences of the realm had risen and been committed by rea-

even down to the reign of Henry V. the manner of passing acts of parliament was this: "A bill in the nature of a petition was delivered to the commons and by them sent up to the lords, and there it was immediately entered on the lords' rolls, where the royal assent was entered also: and upon this as a ground work, the Judges used at the end of the parliament to draw up the substance of the petition and answer into the form of a statute which was afterwards entered upon the rolls, called the *Statute Rolls*, which were distinct from those called the Lords' Rolls or the *Parliament Rolls*. Upon the *Statute Rolls* neither the bill, nor the petition from the commons, nor answer from the lords, nor royal assent were entered; but only the statute as it was modelled or drawn up by the Judges." *Discourse concerning Treason and Bills of Attainder*, 72, 73. Thus it is obvious, that though the ancient statutes differ in their form from the modern, yet the advice and consent both of the lords and commons were equally then as now the basis of the new law.

"son



PART I.  
CHAP. III.

The Jews a  
fertile source  
of revenue.

“son thereof to the great dishonour of Almighty  
“God.” The objections against passing the  
act were merely financial: for it appears upon  
record<sup>1</sup> that from the 17th December 50th of  
Henry III. till Shrove Tuesday 2d Edward I.  
(a space of about 7 years), the Crown received  
420,000l. 15s. 4d. *de exitibus Judaismi*. This  
produce I presume to have arisen out of the  
regular fines, not from the arbitrary and occa-  
sional exactions extorted from the Jews. How-  
ever notwithstanding the great loss to arise by  
the law the Parliament of King Edward thought  
proper for conscientious motives absolutely to  
prohibit Usury as much to the Jews as to all  
other persons; a law *worthy*, says Sir Edward  
Coke, *to be written in letters of gold*<sup>2</sup>. The only  
part of this reverend Judge’s comment upon this  
statute deserving of notice is, as follows: “Our  
“noble King Edward and his father Henry III  
“before him sought by divers acts and ordi-  
“nances to use some means and moderation  
“herein, but in the end it was found, that there  
“was no mean in mischief, and as Seneca saith,  
“*Res profecto stulta est nequitiae modus*: and there-  
“fore King Edward I, as this act saith for the  
“honour of God and for the common profit of

<sup>1</sup> Rot. patent. 3 edit. 1 m. 14. 17. 26. William Middle-  
ton reddit compotum.

<sup>2</sup> 2 Instit. 89.

“ his people without all respect of the filling of  
 “ his coffers did ordain, that no Jew from  
 “ henceforth should make any bargain or con-  
 “ tract for Usury from the feast of St. Edward  
 “ then last past. So in effect all Jewish Usury  
 “ was forbidden.

“ This law struck at the root of this pestilent  
 “ weed ; for hereby Usury itself was forbidden  
 “ and thereupon the cruel Jews thirsting after  
 “ rich gain to the number of 15060 departed  
 “ out of this realm into foreign parts, where  
 “ they might use their Jewish trade of Usury :  
 “ and from that time that nation never returned  
 “ again into this realm.

“ Some are of opinion, and so it is said in  
 “ some of our histories, that it was enacted by  
 “ authority of parliament, that the Usurious  
 “ Jews should be banished out of the realm.  
 “ But the truth is ; their Usury was banished  
 “ by this act of parliament, and that was the  
 “ cause, that they banished themselves into other  
 “ countries, where they might live by their  
 “ Usury.”

This opinion of Sir Edward Coke, that the  
 Jews voluntarily banished themselves after the  
 passing of this act is vehemently combated by  
 William Prynne, who says, ‘ By the laws this  
 “ politic King to please his English Christian  
 “ subjects, who desired and solicited the Jews’

<sup>1</sup> Demur. p. 46, &c.

PART I.  
CHAP. III.

“banishment in parliament, abridged many of  
“their former privileges, and put many re-  
“straints upon them. And yet on the other  
“hand to gratify the Jews (who gave more  
“money than the English to reside here still)  
“he takes them all into his special protection,  
“prohibits all violence to their persons and  
“estates, and grants them some petty privileges  
“for the present, which seem to content them,  
“and made for his own advantage more than  
“theirs.”

Whether  
the banish-  
ment of the  
Jews were  
voluntary.

William Prynne, who under all the peculiari-  
ties of political inconsistency was a man of un-  
common industry talent and information under-  
takes to prove, <sup>1</sup> “that his (Coke’s) own sub-  
“sequent words and records in direct terms  
“contradict this opinion of his no less than five  
“times, which I wonder, he observed not. I

<sup>1</sup> Short Dem. p. 46. Of Sir Edward Coke’s inaccuracy in quoting and unfairness in misrepresenting records Mr. Prynne speaks more emphatically in his Preface to Sir Robert Cotton’s Abridgement of the Records of the Tower. “I wonder much at this gross confident mistake in Sir Edward Coke against so many express records and that in his very Treatise touching Parliament, which is full of other mistakes. To instance in other particulars for the reader’s information Sir Edward Coke in his 4th Institute, c. 1. p. 23. hath five or six gross mistakes together touching the Judicature in Parliament, which I have at large demonstrated and refuted in my Plea for the Lords, &c.”

“shall



"shall recite them at large to undeceive his too  
 "credulous readers of the long robe, who take  
 "his words and works for oracles, (though in  
 "many things very full of gross mistakes) contra-  
 "dicted by his own records he cites, specially  
 "in his chapter of Parliament and Admiralty."

Certain it is, that a King of England could not  
 by his prerogative banish any person from the  
 kingdom: and voluntary departure out of the  
 realm is no banishment. But Sir Edward Coke's  
 confession, that at this Parliament (18th Ed-  
 ward I.) the King had a fifteenth granted to  
 him *pro expulsione Judæorum* seems to amount to  
 a refutation of his own opinion, and to prove,  
 that the Jews were banished from England by  
*Act of Parliament*. What Mr. Prynne has said  
 after all our ancient historians confirms this  
 proof. "The Jews were judicially really ba-  
 "nished

<sup>1</sup> Short Demurrer, p. 46: and in his Preface to Sir Robert  
 Cotton's Abridgement of the Records of the Tower he in-  
 forms us from his own searches amidst the records of these  
 days. "Only I find in the *clause, patent charter and fine*  
 "*rolls* of King John, Hen. III. Edw. I and II, some writs  
 "of summons, and some *memorials of acts, ordinances made*  
 "*and ayds, subsidies, dismes, quindismes*, customs granted in  
 "parliament, held during their reigns, the rolls whereof are  
 "perished and quite lost either through the negligence of the  
 "record keepers (or other probable causes there enumera-  
 "ted). By means whereof these parliamentary rolls being  
 "no where to be found, their defect must be supplied only  
 "out

PART I.  
CHAP. III.

Of the time  
of passing  
the statute  
de Judaismo.

“nished both by King and Parliament princi-  
“pally for their infidelity and other fore-  
“alleged reasons commanded under pain of  
“hanging to depart out of it at a set day: for  
“the effecting and hastening whereof the Com-  
“mons gave the King a *fifteenth*.”

Sir Edward Coke speaks of the time of the passing of this statute as of a matter of notoriety, having been made in the session of a parliament, *tantum post festum Sti Hillarii et post pascha anno 18 Edward I.* Now although this do not exactly specify the duration of the session, yet it proves, that it began after Hillary

“out of such *fragments* and *memorials* of them as are extant  
“in our other records and ancient historians, especially in  
“Mat. Paris, Mat. Westminster, William of Malmesbury,  
“Henry archdeacon of Huntingdon, Roger de Hoveden,  
“Simeon Dunelmensis, the Chronicle of Brompton Radul-  
“phus de Diceto, Ranulphus Cistrensis and Thomas of  
“Walsingham, who give us some account of their proceed-  
“ings and transactions, which also had been utterly buried in  
“oblivion as well as their rolls, in which they are at large  
“recorded, &c.” Besides the testimonies of the above-mentioned authors, we find the like accounts of the parliamentary exile of the Jews in the 18th year of Edward I. in Henry of Knyghton de Eventib. Ang. l. iii. c. 1. Coll. 2462. 2466. John Major in his Hist. lib. iv. c. 9. and after him the Magdeburg Centuriators ch. xiii. col. 1286 say, that *every of the Commons gave the King the 15th penny, that he might banish the Jews.* And also in John Bale, cent. 4. Script. Brit. c. 60, in Append. Polydor. Virgil. Ed. 1. Hol-lished, p. 285, &c.

and

and continued some time after Easter term : and although the act were made to commence it's operation from the feast of St. Edward then last past, which was the 18th of March, yet might there have been full time even during that very session after the passing of the act to experience it's effects either in the insolence or overbearing of the Jews or the discontents of the people. This act was passed between the 18th and the 29th of March : for it mentions the feast of St. Edward (18th March) as past, and directs something to be done *between this and Easter at furthest*, which in that year 1290 fell on the 29th of March. If the grant of one fifteenth to the King were made for the consideration mentioned by cotemporary authors, who wrote whilst the records of parliament existed and could be referred to, then such grant of a parliamentary aid necessarily imported the privity advice and consent of the grantors to the act, which was in fact the consideration of the grant ; and this was the banishment of the Jews. But every act done by the King of England with the advice and consent of the Lords and Commons legally convened becomes a legislative act and a law of the land. If we keep in view the method then commonly pursued of passing acts of parliament 'we shall per-

<sup>1</sup> Vide note, p. 110.



PART I.  
CHAP. III.

ceive how easily the petition of the Commons with their offer of the aid may have been sent up to the Lords and entered upon their rolls and the royal assent given to it between the passing of the statute de Judaismo a little after the 18th of March and the 18th of July following, which is the date of a writ directed to a sheriff concerning the Jews then ordered into banishment<sup>1</sup>. The King could banish no man without the aid of parliament, as is evident by Magna Charta (c. 29).

Two material observations upon the statute *de Judaismo* seem to confirm the assertions I have, in differing from some very respectable writers, before hazarded. The first is, that the church was against the oppression and persecution of the Jews, as a most antichristian system, and therefore the legislature of this day paying just deference and submission to the dictates of the clergy in exposing the true spirit and tendency of the evangelical doctrines, as it was their duty emphatically to do, declared that to be the reason, why they did not enact oppressive and persecuting laws against the Jews (sect. 6.) *Because holy church wills and suffers that they should live and be protected.* I am happy in contrasting

<sup>1</sup> Appendix No. VI. Rot. Claus. 18 Ed. I. 11th July. There are several such writs and they are entituled *De Judais regno Anglia exantibus.*

this authentic document of the mildness and justice of church governors, against many groundless imputations of their intolerancy and persecution. The second is, that the ecclesiastical jurisdiction over live Usurers was given by common law, and not as Sergeant Rolle has asserted, by the 15th of Edward I, which was in the same year repealed. For by this act, which was certainly passed after the 15th Edward I, it is enacted (sec. 7.) *that none of them (Jews) shall be obedient or respondent, but to the King and his bailiffs in his name &c. saving the right of holy church.* Now it never was pretended, that the Jews could be brought into the spiritual courts upon any other than the score of Usury, which this saving therefore must refer to. And if this right had only been given by the 15th Edward I, and the act had been in the same year repealed, it could not have been *saved* though it might have been given anew or revived by a subsequent act of parliament.

About three years after this banishment of the Jews there is another parliamentary record, which proves by it's very nature, that their banishment was not voluntary, but by the authority of parliament: which was for the King's recovering from the prior of Bridlington a sum of 300l. due from him to a Jew before their banishment: after which whatever remained of the debts and

Proofs of  
their exile  
not being  
voluntary.

PART I.  
CHAP. III.

chattels of the Jews in the realm belonged to the Crown. <sup>1</sup> It was utterly impossible, if their banishment had not been ordained by parliament, that such property should have belonged to the Crown. For neither their own *voluntary* exile, as Sir Edward Coke has asserted it to be, nor even their banishment by royal proclamation could have worked an escheat or given to the Crown a right to sue the Prior of Bridlington for a debt, which he owed to a Jew. Mr. Prynne then had strong reasons to conclude, that the Jews <sup>2</sup> banishment was “by the unanimous decree judgment edict and decree both of the King and his parliament : and not by the King alone : and this banishment total of them all, and likewise final, never to return into England : which edict and decree not now extant in our parliament rolls (many of which are lost) nor printed statutes, yet is mentioned by all these authorities.”

However ambiguous or suspicious some facts may appear, that have been recorded by cotemporary and repeated by successive historians, yet when the testimony of coeval writers concurs with that of their immediate successors for a

<sup>1</sup> Appendix, No. VII. Plac. Parliament post pasch. apud Lond. 21 Edw. I. and there is another similar record to be found in the rolls of the 22 Edw. I. Rot. 6.

<sup>2</sup> Demurr, p. 40.



length of time in retailing or referring to a notorious fact, the evidence of which could, whilst they wrote, be either proved or disproved by the records of parliament, if future generations were to refuse their belief to such concurrent testimony, they would at once destroy the possibility of any moral certitude in past events. The stream of opinion is against the solitary assertion of Sir Edward Coke; he alleges no proof that the statute *de Judaismo* was not made before the 18th of Edward I, and asserts positively, that at *this same parliament* (18th Edward I) *the King had a fifteenth granted to him pro expulsione Judæorum*.<sup>1</sup> This very assertion is substantially contradictory of his own opinion, that their banishment was voluntary, or even that it was made by the King without the concurrence of his parliament. It was in fact not impossible, though rather improbable, that both these acts should have been made in the<sup>2</sup> same session of parliament, as Sir Edward Coke asserts. The act, which banished the Jews is evidently subsequent to the statute *de Judaismo*, and must from it's nature have been a virtual, if not

<sup>1</sup> 2 Instit. 507.

<sup>2</sup> I doubt if the absurd principle of referring the effects of every act passed during a session to the first day of it, were then adopted. It is now very properly limited to the day on which by the royal assent it passes into a law.

PART I.  
CHAP. III.

Aberation  
of the law  
concerning  
the Jews.

an exprefs repeal of it: for the latter act removed the objects, upon which the first act could operate.

Upon the whole, I think it but fair to take the 18th of Edward I (A. D. 1290) as the date, from which the common law of England made no longer a diftinction between a Jew's and any other perfon's civil rights in this country. Before this period a Jew alone could lawfully and legally lend or place out money *at In'ereft*, which in thofe days was termed *Ufury*. So when the thing itfelf was once abolifhed, all it's accelfaries and confequences dropped of courfe. As the Jews never regained any regular footing in the kingdom between this period and the 27th of Henry VIII, when every written law, which concerned *Ufury* was certainly repealed, and few or no laws affected the Jews but with mediate or immediate reference to *Ufury*, it would be now a fruitless reſearch to examine whether any laws affecting the Jews prior to the 18th Edward I ſurvived that period and became abolifhed by the general repealing act of Henry VIII.

Nature of  
banifhment.

It is impoffible, to extend the effects of banifhment beyond the individuals banifhed: for it is a perſonal punifhment. And I know of no law, that ever prohibited a Jew more than any other perſon from coming into this kingdom: and  
when

when we throw back our reflection upon the invariable and outrageous rancour, with which our annalists and other writers have endeavoured to blacken this race of people, it is highly honourable to them, that during the space of 505 years, the legislature should never have had occasion to pass any acts concerning or relative to them but such as were generally beneficial; if we except the 1st of Ann, c. 30, by which the chancellor is empowered to make a suitable provision for the Protestant child of a Jewish parent, in order to prevent any compulsion upon such child to change it's religion. Such is the 13th George II. c. 7, by which Jews presenting themselves to take the oath of abjuration in order to be naturalized in America are allowed to omit the words *Upon the true faith of a Christian*. Such was the exception in their favour (26 George II. c. 33.) by which it was declared, that the constraints of the marriage act should not extend to any marriage amongst persons professing the Jewish religion, where both parties to such marriage profess that religion. Such was the 26th of George II. (c. 26.) for naturalizing Jews without subjecting them to the condition of receiving the sacrament according to the rites of the church of England. This last act was but of short duration, having been repealed by the 27th George II. (c. 1.) The repeal however seems

Acts favourable to the Jews.



## PART I.

## CHAP. III.

seems to have been rather extorted by popular clamor, than dictated by reason or equity; for the preamble says, *Whereas occasion has been taken from the said act to raise discontents and to disquiet the minds of many of his Majesty's subjects.* It cannot but appear to most men to be the *ne plus ultra* of folly bigotry and intolerance to confine the adoptive rights of citizenship to those, who really believe or who will conform without believing in the religion of the church of England. Foreign Jews are not more illiberally treated in this respect, than aliens of any other denomination. English Jews, who are to all intents and purposes natural born subjects are liable to no other pains penalties or disabilities, than such as all other natural born subjects are made liable to, who cannot *sincerely* submit to the belief of the 39 articles of the church of England or will not prostitute their consciences to the immorality and turpitude of occasional conformity.

## CHAP. IV.

## OF USURY BY STATUTE LAW.

## CONTENTS.

*Statute of Merton 1235—Two Acts in the third Year of Henry VII. c. v. and c. vi. and another Act in 11 of Henry VII. (c. viii.) 37 Henry VIII. c. ix. 5 and 6 Edward VI. c. xx. —Observations and Debates upon the Act of Elizabeth. 21 Jac. I. c. xxii. 12 Car. II. c. xiii. 12 Ann. c. xvi. 3 Geo. I. c. viii.*

THE earliest statute we find, that mentions *Usury* is that of Merton, passed in the 20th of Hen. III. A. D. 1235; the 5th article of which provides, that from thenceforth Usuries should not run against any being within age from the time of the death of his ancestor until his lawful age<sup>1</sup>. Upon this Sir E. Coke<sup>2</sup> very justly observes, that the statute could only affect the Jews. “For at that time and before the Conquest

PART I.  
CHAP. IV.

Statute of  
Merton.

<sup>1</sup> Appendix, No. VIII.

<sup>2</sup> 2 Instit. 89.

“also,

PART I.  
CHAP. IV.

“also, it was not lawful for Christians to take any  
“Usury, as it appeareth by the laws of St. Edward, &c.” Since this as well as every other act, which relates to Usury which was passed before the 37 Hen. VIII. (A. D. 1545.) was repealed by that act, I shall not dwell upon their effects, as such discussion would be of little real utility. By the marvellous fertility of our modern legislators, the statute laws now in being are too numerous and intricate to justify researches into obsolete usages or repealed laws. Several complaints, as I have before observed, were at different times made by the Commons of the encreasing and oppressive practices of Usurers; but the King and Peers never would admit of any alteration in the common law of the land, by which the punishment of live Usurers was reserved to the ecclesiastical courts<sup>1</sup>.

For

<sup>1</sup> It is generally true, that the clergy have been tenacious of those rights and privileges, which they derived from the state: and such was their power in this country of punishing Usurers. It ought however to be considered, that these clergymen in their corporate capacity were usufructuary tenants and guardians and trustees of all their temporal and corporate rights for their successors: they were therefore by their trust bounden to defend and preserve them, as far as they decently and lawfully might: they no more ought of themselves to surrender their chartered rights, than resist the supreme act of the legislature, when it thought proper to deprive them of them. If this principle were duly attended

to,



For the sake of regularity I should here recapitulate the different acts or legislative declarations concerning Usury, which I have before had occasion to notice. As most of them were declaratory of the common law, I profited of them, as the best evidence that could be adduced to ascertain what the common law of Usury was. The statute *de Judaismo* was a most important act, in as much as it absolutely prohibited Jewish and all other Usury whatsoever: so that it was a virtual repeal and annulling of the statute of Merton, which was bottomed on the legality of some Usury, viz. *Jewish*, as we have before seen.

In the reign of Henry VII, three several acts were passed against Usury: the two first of them in one session, viz. in the third year of that monarch (A. D. 1486. c. 5. and c. 6.)<sup>1</sup> By the first of these acts, all bargains by the name of *dry exchange*, whereby any sum should be lost, were declared to be void. By the second, all unlawful Chevizance and Usury were declared should be extirpate: all brokers of such bargains were condemned to the pillory and put to open shame, were to be half a year imprisoned and pay to, the conduct of the archbishop of Canterbury in resisting the attempts of Henry II. to wrest from the clergy many of their rights and privileges without the consent of parliament would appear in a light very different from that, in which it is generally represented by modern historians.

Three Acts  
of Henry  
VII. against  
Usury.

<sup>1</sup> Append. No. IX. and X.

a penalty

PART I.  
CHAP. IV.

a penalty of 20 l. In the eleventh year of this king (c. 8.)<sup>1</sup> the first act passed in his reign concerning Usury or dry exchange was repealed on account of its obscurity, and it was enacted, that any person, who should lend his money upon Usury, or make any bargain of lands or goods grounded upon Usury, should forfeit the one half thereof. By these acts of Henry VIIth<sup>1</sup> Sir E. Coke says<sup>2</sup>, *All Usury is damned and prohibited, and there it is called dry exchange.*

Dry Exchange.

This dry exchange (*cambium siccum*) is now, I believe, little known in practice: it consisted in giving money at one place, to be repaid it, after a certain time in the same place with a certain sum over, usually exceeding the legal rate of Interest. As this was but a shift for evading the statutes of Usury, the common form and method of transacting a real bill of exchange were adhered to. The borrower for instance drew a bill of exchange on an imaginary person at Amsterdam, at the price the exchange for Amsterdam then went at, and delivered it to the lender. After the expiration of the time, which the bill had to run, came a protest from Amsterdam for the non-payment of the bill, with the *re-exchange* of the money from thence to London: all which, with the costs, besides a deduction perhaps at the making

<sup>1</sup> Appendix, No. XI.

<sup>2</sup> 3 Inst. 150.

of the bargain, the borrower pays. Dr. Wilson (fo. 118) says "that it standeth the borrower  
 "sometime above 25 or 30 in the hundred  
 "pound for the yeere. And bills by this kind  
 "of exchange are made on God's name for a  
 "color onlie to get the parties hand to them, to  
 "shew, (if need be) that such money so lent was  
 "taken up for him by exchange, the said bills  
 "being never sent out of London." And "this  
 "drie kinde of exchange is utterlie to be abhor-  
 "red, for that it is none other, than a manifest  
 "cankered Usurie, and therefore has been here-  
 "tofore forbidden by acts of parliament, &c." The acts of parliament which Dr. Wilson here alludes to, are those mentioned in the repealed act of 3 Hen. VII, c. 6. "For remedie where-  
 "of manie noble statutes against the same made,  
 "whereof one speciall statute was in the xv yere  
 "of K. Ed. III made for the same remedie and  
 "in Henry the 4th Henry V and in Henry VI  
 "daies &c. This act also confirms the peynes  
 "in the same statute of King Richard contain-  
 "ed." This act of Richard was passed in the 14 Richard II, c. 2. and obliged all merchants to the court of Rome and elsewhere to give security in Chancery, that they would within three months after they had made any exchange purchase to the amount of such exchange commodities of this country upon pain of forfeiture

K

of



PART I.  
CHAP. IV.

of the same. What the act of Henry VI. is, I neither find in Rastell or Ruffhead: no other act appearing to have been passed upon this subject than the 1st of Henry VI. cap. 1, by which the King's Council were enabled by authority of Parliament to assign masters and workmen to coin gold and silver and hold the exchanges of money in York and Bristol<sup>1</sup>.

37 Henry  
VIII.

From the 37th of Henry VIII a total change took place in our law respecting Usury: before that time no Usury or Interest whatever could be lawfully taken for the forbearance or loan of money (unless by Jews till the 18th Edward I.): since the passing of this 37th of Henry VIII. a certain species of Usury, which is the taking of Interest for the forbearance of money, is allowed of to a certain degree or rate: and I humbly presume, that beyond this degree or rate of sta-

<sup>1</sup> From this and many other such instances appears the supereminent necessity of a general revision and arrangement of the statute law. And it is with satisfaction that I see the first step taken in this most desirable work by a very rational and judicious report from the committee of the House of Commons upon temporary laws expired or expiring made in the last Session of Parliament. This committee was appointed to inspect and consider all temporary laws only. But it is to be wished, that their powers may be extended to the whole code, and proper persons appointed to prepare the laborious part of this arduous and important enterprise under the direction and for the final approbation of the committee.

tute

tute Interest every bargain or contract for, and every taking or receiving of any Interest premium or profit for the loan advancement or forbearance of money, which before that act would have been *Usurious at common law*, remains still so to this hour. The first part of this act<sup>1</sup> is an absolute repeal of all statutes theretofore made concerning Usury. It then absolutely prohibits under the penalties of this statute<sup>2</sup> an usage (then probably not unfrequent) of selling merchandize or wares and re-purchasing the same at a less price within three months. The prohibition of this practice being made by this statute proves it to have been looked upon at that time as a transaction of a corrupt and usurious nature. It then enacts, that every person taking above ten per cent. per annum by means of any corrupt bargain, loan, exchange, chevizi-  
 zance, shift or Interest of any merchandize wares or other things or by any other deceitful way or out of the profits of mortgaged lands, &c. shall be liable to the penalties of the act : which are forfeiture of the treble value of the things sold or exchanged and of the annual rents of the lands so mortgaged, (one moiety thereof to the king, the other to the informer) and imprisonment and fine and ransom at the king's will.

<sup>1</sup> Appendix, No. XII. The Act at large.

<sup>2</sup> This was also provided against by 11 Henry VII.

PART I.  
CHAP. IV.

It is highly material to remark, that in this act of Henry VIII. the word *loan* does not once occur. Nor does it appear to have been in the contemplation of the Legislature at this time to provide for the legality of taking Interest upon any other species of loan, than that of mortgage or conditional sale of lands. For that lucre or gain, which the act allows of, is *for the forbearing or giving day of payment of one whole year of and for his or their money or other things, that shall be due for the same wares, &c.* This evidently does not refer to the Interest of money lent. I shall hereafter have occasion to offer some more remarks upon this subject in the ensuing chapter.

5 and 6 Edward VI.

In the 5th and 6th of Edward VI. (A. D. 1559) an act was passed to repeal the 37th of Henry VIII, which had been misconstrued by many to permit some degree of Usury, whereas all Usury whatever was presumed to be against the word of God; it therefore prohibited absolutely any degree or rate of Usury whatsoever, by lending giving setting out delivering or forbearing any money to any person corporation or body politicke, or for any manner of Usurie encrease lucre gain of Interest to be had received or hoped for above the Principal (in the precise sense of the most violent divines, that have ever condemned the usage). The penalties of this



act were the forfeiture of the sum lent as well as the encrease, imprisonment and fine at the king's pleasure<sup>1</sup>.

PART I.  
CHAP. IV.

13 Eliz.

Excessive rigor generally defeats the very end proposed by those, who imposed it: and thus under the act of Edward VI Usury was found to encrease. When in the 13th of Elizabeth (A. D. 1571) the Legislature<sup>2</sup> reciting the substance both of the act of Henry VIII, and that of Edward VI, and taking notice, that the vice of Usury especially *by way of sales of wares and shifts of Interest* was encreased since the act of Edward VI, which did not provide against them, and which made no distinction of punishment between greater and less *exactions and oppressions by reason of loans upon Usury* repealed the act of Edward VI, and revived that of Henry VIII. It then extended the remedies of the revived act by declaring all bonds contracts and assurances collateral or other for payment of any money lent or covenant to be performed upon any Usury against the act of Henry VIII to be void. It declared all brokers solicitors and drivers of bargains against the revived act to incur a *præmunire*. It also superadded to the penalties of the revived act the forfeiture of as much, as should be reserved by way of Usury above the Prin-

<sup>1</sup> Vid. the Act. Appendix, No. XIII.

<sup>2</sup> Appendix, No. XIV.

PART. I.  
CHAP. IV.Observa-  
tions upon  
the act of  
Elizabeth.

principal lent. It declared what magistrates should try the offence how the act of Henry VIII should be construed, (viz.) *largely and strongly for repressing the usage*: it reserved to the ecclesiastical courts the power of punishing offenders; and declared the act should last only for five years: and if it should be not continued in the first session of parliament after the expiration of the five years, then all the acts repealed by it should be revived<sup>1</sup>.

It is to be remarked, that neither the act of 13th Henry VIII, nor of the 13th of Elizabeth, positively or directly sanctions or authorizes that rate or degree of Usury, to which they do not apply their penalties or forfeitures: all therefore, that they can be strictly said to have done, was to inflict certain punishments, which did not exist at common law for a certain rate or degree of Usury, which statute penalties did not apply to that moderate degree of Usury, which

<sup>1</sup> It is to be remarked, that this act of Elizabeth expired on 25th June 1576, and from that day till 1597 (39 Eliz.) the act of Edward VI. stood revived: when the 13th of Elizabeth was made perpetual by the 32d clause of 39 Elizabeth, c. xviii. without alledging any reason ground or motive for so doing. In strict propriety the act should have been revived: the words however are, *That the said act and every branch clause and provision therein contained shall from henceforth be remain and continue in full force and effect for ever.*

ten per cent. was then from the scarcity of money supposed to be. As this act of the 13th of Elizabeth so expressly notices that, *forasmuch as all Usury, being forbidden by the law of God, is sin and detestable*, it is to be presumed, that the Legislature was thoroughly aware of this kind of indirect or virtual sanction, which it meant to give to moderate Usury. The debates in the House of Commons upon Elizabeth's bill against Usury ran high; and yet I find but one member a Mr. Mooly, who dared manfully to declare, that moderate Interest was not against the law of God. He spoke with great caution, and quoted amongst other authorities, two divines of a very opposite cast, Bellarmine and Beza to prove, that the true interpretation of the Hebrew word (*neshech*) is not *usura* but *morsus*: thus laying the criminality only in oppressive and unjust excess: or as it was well expressed by another member of the same side of the question, *who took that for no Usury, which is without grievance*. Dr. Wilson, whose work I have often quoted, Sergeant Lovelace, Mr. Fleetwood and others were extremely vehement in totally reprobating every species and degree of Usury. Mr. Fleetwood in particular contended, that it was expressly prohibited by Scripture: that it was <sup>1</sup> “*malum in se*; for that

<sup>1</sup> Parliamentary History of England, Vol. IV. Debates on a Bill against Usury. 146.



PART I.  
CHAP. IV.

“ of some other transgressions, her majesty may  
“ dispense afore with ; but for Usury, or to grant  
“ that Usury may be used, she possibly cannot.”

I find from the journals of the House of Lords, that the bill was sent down to the Commons with the addition of a new clause, which I take to be the ninth clause of the act, by which the ecclesiastical jurisdiction in punishing offenders is saved, and, which, as I have before observed, was a right given to the ecclesiastical courts by the *common law* of England. The whole clause appears to be grounded in redundant caution: for as the positive parts of the act went only to annex new punishments to the offence, when it exceeded a certain rate or degree, they could not fairly be interpreted to abolish the common law punishments for the same offence in the same degree: yet in as much as this statute law imposed new penalties upon offenders to a certain degree, it was fairly to be inferred, that the law did not look upon that criminal, which it did not punish: and therefore that it tacitly recognized and sanctioned the usage of taking moderate Interest. Upon this inference has this nation generally acted for these two last centuries; and in a matter of such general usage, the presumption in favor of its lawfulness will stand in lieu of an host of arguments. The only sense, that I can extract from

from the latter part of this ninth clause <sup>1</sup> is, that from henceforth the common law punishments of Usurers shall not be applied to persons taking less than ten per cent, but only to those, who shall take more: which is but another indirect method of sanctioning by law the taking of a certain rate.

PART I.  
CHAP. IV.

The next act concerning Usury was the 21 Jac. I. <sup>2</sup> (A. D. 1624), which appears to have passed under all the prejudices and prepossessions against its lawfulness, which ever actuated the most rigid casuists. Hence the superabundant caution of the last clause of the act, viz. *That no words in this law contained shall be construed or expounded to allow the practice of Usury in point of religion or conscience*: and this was introduced, as Judge Dodderidge remarked in *Oliver and Oliver* the very year after its passing; for the satisfaction of the bishops <sup>3</sup>. The same sort of negative and indirect sanction of Usury to a certain degree is observable in this, as it was in the statutes of Henry VIII and Elizabeth: as if the *civil magistrate*, who is bounden by all the moral obligations, which affect individuals, could validly or lawfully sanction or authorize *that* by a

21 Jac. I.

<sup>1</sup> It appears evident to me that the last *not* in the clause has been inserted by mistake.

<sup>2</sup> Appendix, No. XV.

<sup>3</sup> Vid. antea.

PART I.  
CHAP. IV.

side wind, *which* he neither ought nor could direct or justify in exprefs terms. The preamble of this act of James notices the ufage of taking ten per cent not as an unlawful practice, though under the then existing circumstances as a rate disproportionate to the ftate of commerce and the quantity of money in circulation, and therefore confines the penalties and forfeitures of the act to the taking of Interest above eight per cent. per annum. It is obfervable, that the enacting words of this ftatute are literally copied from thofe of the former acts, with the mere fubftitution of *eight* for *ten* per cent. Befides the penalties upon the ufurious lender, this act has alfo extended its feverity to the fcrivener agent or broker, by fubjecting him to fix months imprisonment and to 20 l. forfeiture for every offence in taking more than  $\frac{1}{4}$  per cent. procuration-money or more than 1 s. for filling up a bond. The act was declared to continue only for feven years from 24th June 1625.

In the third year of Charles I. (A. D. 1627) by an act intituled *An act for continuance and repeal of divers ftatutes*, (feft. 5.) this act againft Ufury paffed in the 21 Jac. I. for feven years, was made perpetual

12 Car. II.

In the first year after the Reftoration, (A. D. 1660) which is reckoned the 12th Car. II. <sup>1</sup> the

<sup>1</sup> Vid, Act. Appendix. No. XVI.

parliament



parliament found it expedient to reduce the rate of interest to 6 per cent, which the act particularly notices in the preamble was the common rate, at which money was placed out in foreign nations, with which we then trafficked: it also notices the beneficial effects to the ingenuity and industry in the husbandry trade and commerce of the nation, which the late fall of Interest from 8 to 6 per cent. had produced: the act then imposes the forfeiture of the treble value of the monies wares merchandize and other things lent bargained sold or shifted, at more than the rate of 6 per cent. per annum: and re-enacts the penalties of James I. against the agents scriveners brokers, &c. who take above 1-fourth per cent. premium for procuration, &c.

Under some ideas of informality in the mode of convening the first parliament after the Restoration, in the next year, (13th Car. II, c. xiv.) this act *for restraining the taking of excessive Usury* was amongst several other acts, “ thereby  
 “ ratified and confirmed, and enacted and declared to have the full force and strength of  
 “ acts of parliament, according to the tenor and  
 “ purpose thereof, and so should be adjudged  
 “ deemed and taken to all intents and purposes  
 “ whatsoever, and as if the same had been  
 “ made, declared and enacted by authority of  
 “ that

PART I.  
CHAP. IV.

“that present parliament.” In all these successive acts against Usury, the parliament uniformly retained the same form of the general enacting clause, by which the enemies to every species of Usury endeavour to prove, that the act as directly prohibits the practice in a moderate degree, as it does in that degree, which it punishes. Thus said Roger Fenton before the passing of the act of Jac. I, in arguing upon the statute of Elizabeth <sup>1</sup>, “It doth not only punish  
“excessive Usury above ten in the hundred,  
“but all under 10, under 9, under 8, be it  
“never so little, it is punishable by the statute  
“and therefore simply forbidden by the intent  
“of the same.” We find also in the case of SANDERSON *versus* WARNER <sup>2</sup>, which came before the court in the 20th Jac. the very year before the passing of this statute, that Noy, who was counsel for the plaintiff, urged, that as Usury was forbidden by the law of God, so there was no law of this realm, which allowed of it: and although they tolerate or connive at certain kinds, yet they approve of no sort of Usury.

<sup>1</sup> 1 Ann.

This reasoning is equally applicable to the 12th of Ann. c. 16. <sup>3</sup>, by which the present rate

<sup>1</sup> 2 Lib. c. xii.

<sup>2</sup> Palmer, 291.

<sup>3</sup> Vid. the Act, in the Appendix, No. XVII.

of Interest at 5 per cent is fixed, as to the act of Elizabeth. This act of Anne differs only in the title and preamble from that of Car. II. It is curious to remark how progressively the prejudices concerning Usury seem to have worn off. After the act of Jac. I, nothing is to be found in the body of any of the statutes concerning Usury, which refers to the sinfulness or immorality of the usage. The title of the act of Car. II, *for restraining the taking of excessive Usury* seems in some measure calculated to sooth the qualms of those consciences, which could not be reconciled to the direct sanction or permission to take moderate Interest or Usury. The title however of the act of Anne, *An Act to reduce the rate of Interest*, &c. does not appear to have been framed upon any such consideration; as it must pre-suppose the lawfulness of the usage, which the act undertakes to alter: for a written law reducing the rate of Interest from 6 to 5 per cent. could not fix it at the lower rate, if the taking of that were in itself an unlawful and immoral act. Thus stand the statute laws of this realm concerning Usury and the Interest of money taken on loans.

It is obvious, that a legislative interpretation of a statute is the most conclusive, that can be had. Within three years from the passing of this act of Anne, the parliament in the 3d of Geo. I.

3 Geo. I.



PART I.  
CHAP. IV.

Geo. I. (A. D. 1716,) thought proper to enable the governor and company of the Bank of England or their successors to borrow money at such rate of Interest, as they should think fit, “although the same shall happen to exceed the *“Interest allowed by law to be taken”*.” These words must put all doubts about the direct operation of the different statutes concerning Usury to rest: for it is evident, that the law cannot forbid or condemn the taking of any Interest, if there be a certain rate of Interest *allowed by law to be taken*.

14 Geo. III.

The last act, which I find upon our books concerning Usury is the 14th of his present Majesty, (c. 79<sup>1</sup>.) which is explanatory of the 12th of Anne, by declaring that all mortgages and other assurances of lands and their assignments or transfers in Ireland and the Plantations for securing money already executed in Great Britain should be as valid, as if executed on the mortgaged lands, and should continue to carry Interest at the rate allowed of by the laws of the colony, where the mortgaged lands lie: but as to future loans, it limited them to 6 per cent. and it very wisely provides against fraud by confining the loan to the real value of the lands,

<sup>1</sup> 39 Sect. of Ch. viii. 3 Geo. I. Vid. App. No. XVIII.

<sup>2</sup> Vid. the Act, No. XVIII. Append.

&c. The act gives treble forfeiture of the sum thus fraudulently borrowed beyond the value of the land mortgaged; and for greater notoriety and certainty all such mortgages or transfers are required to be registered in the country, where the lands lie, or else to remain liable to the 12th of Anne.

PART I.  
CHAP. IV.

Although I have before questioned the opinion of Lord Coke, who holds the total extinction of the common law of England concerning Usury by virtue of the 37th of Henry VIII, yet it is obvious, that the statutes concerning Usury have so completely drawn under their operation all the usual offences upon this head, that there have been few or no cases (at least of importance) determined, but upon some of the statutes since their passing. The ground upon which I contend for the existence of the common law of England concerning Usury, is to keep alive and active that rule of law, *that no action will lie upon a contract, that is usurious at common law*. With great diffidence I submit this suggestion to the public, that *common law Usury* and *statute law Usury* are not perfectly co-extensive: for I humbly conceive, that there may be cases of oppression extortion and hardship in money negotiations, that will be really *usurious at common law*, although they fall not within  
any

Most cases of  
Usury are  
now upon  
the statute.

PART I.  
CHAP. IV.

any of the statutes of Usury : this I shall endeavour to exemplify in the cases, as they may occur. The following chapter therefore will be the proper comment upon this point.



## C H A P. V.

UPON THE DETERMINATIONS  
OF THE COURTS IN  
CASES OF USURY.

## CONTENTS.

*Nature of the Difference between Usury by Common Law and by Statute Law—What Acts and Contracts the Courts have determined to be Usurious—Corrupt Contract and Corrupt Taking without such Contract—Corrupt Bargain and Taking completes the Offence, for which the Statute gives treble Damages—How far the Common Law and Statute Law co operate upon Usurious Acts—Of corrupt Agreements without taking excessive Interest and vice versâ—Examination of Lord Chief Justice De Grey's Opinion upon the Requisites to constitute the Statute Offence—No Action will lie at Common Law for Interest or Usury—Attempts and Shifts to evade the Statutes of Usury—Furnishing Goods instead of Cash for raising Money on them Usurious—Every Excess of legal Interest in Value as well as Money Usurious, if the Party intend to make more than legal Interest—Usage of Trade sometimes justifies the*

L

-taking

*taking of more than 5 per Cent.—Usury often depends upon the Intention of negotiating Parties—Whether the Interest may be withholden at first—Of discounting Notes—Of taking excessive Interest on Default of Payment on a given Day—Where Principal and Interest at Hazard no Usury—Bottomry Bonds and Loans on Contingencies and hazardous Bargains—Slight Hazards take not a Case out of the Statutes—Whether a Loan necessary to constitute Usury?—Nature of Continuation Premiums—The Intent makes Usury—Of taking 6 per Cent. on Securities in Ireland and the West Indies—Of personal Contracts entered into in foreign Countries—Redress and Remedies of Usury—Usurious Contract avoids the Security—Whether void Securities valid in the Hands of Third Persons not privy to the Usury—Borrowers may avoid their own Acts in Usury.*

PART I.  
CHAP. V.

Whether there be a difference between statute and common law Usury.

SINCE the passing of the acts concerning Usury, almost all the adjudged cases have arisen upon some of the statutes. In as much therefore as they apply to the nature of the *statute* offence, they are not conclusive as to *common law* Usury, if the one differ from the other. By attention to the cases we shall determine how far this distinction is warranted. It is evident, if the common law concerning Usury be still subsisting,

ing, that whatever is Usury by the *statute*, is Usury also by *common law*: but the question is, Can there now be Usury by *common law*, that is not a case within some of the statutes? The grand effect of the act of Henry VIII. concerning Usury was to render a certain rate or degree of it legal and lawful: whereas by the common law and the then existing statutes passed in the 11th of Henry VII, by which the receipt of any thing besides or above the money lent for forbearance was declared to be "against natural justice, to the great displeasure of God and of our sovereign lord, and the common hurt of this his land."

The species of Usury, which was cognizable and punishable by the spiritual court, was perhaps such only, as was formerly allowed to be taken by the Jews, which was regular Interest upon the loan or for the forbearance of money. To this species of Usury the answer to the Commons in 1382 probably referred, '*Touching Usurie the King willeth, that the laws of the church should discuss the same.*' Whatever this crime of Usury was in the reign of Richard II, that was to be discussed and punished by the ecclesiastical courts, it appears to have continued the same offence through the reigns of Henry the Seventh and of Queen Elizabeth, by saving the spiritual

' Vid. antea.



PART I.  
CHAP. V.

jurisdiction or the ecclesiastical right of punishing it by the respective statutes passed in the 11th of Henry the Seventh and the 13th of Elizabeth. The remainder of the answer to the petitions of the Commons clearly proves, that in the reign of Richard II there were other acts of Usury, which were not merely cognizable and punishable in the spiritual courts but also in the common law courts. The words of that answer, which are strong evidence of what the common law then was, most undeniably extend that offence of Usury, which was punishable by common law beyond that, which is punishable by statute: this latter being probably confined to the taking of any excess of Interest beyond the rate allowed of by the statute: and the former going to every grievance *by Usury upon account trespass extortion oppression falsehood deceit or such like means.* Now in order to bring our ideas of Usury under some systematical arrangement, I shall endeavour to ascertain,

1st. What acts and contracts the courts have determined to be Usurious.

2d. What redress and remedies they have afforded to correct or check the evil.

Policy of  
the laws a-  
gainst Usury.

In proportion to the necessity of a free and easy circulation of money in a mercantile country arises the importance of the following investigation.

In

In the foregoing chapters I have endeavoured to remove some objections against the propriety of the Legislature's sanctioning the usage and regulating the rate of Usury or Interest for the loan or accommodation of money. In this I shall endeavour to draw the attention of my reader to that watchful jealousy, with which the courts have ever protected the necessitous borrower against the oppressive terms of the usurious lender. It is no difficult task for a man of ingenuity and information to frame very strong and very plausible arguments against the theory of checking and fettering individuals in the disposal and application of the fruits of their personal labour and industry. The very basis of government is the duty of the magistrate to render the rights of individuals conducive to the welfare of the whole. When we consider therefore to what extremities the *auri sacra fames* impells the covetous, and the dread of penury and disgrace will urge the distressed, I think the candour of experience and observation must allow it to be the duty of the magistrate, by moderate limitation to deprive both the miserly and the needy of the power of ruining themselves or others by the uncontrolled indulgence of their passions or the unprotected necessity of yielding to misfortune.

Our courts of law and equity have wisely

l. 3

established

PART I.  
CHAP. V.

Grounds of  
our law a-  
gainst Usury.

established their doctrines upon Usury on the most humane of principles. They not only benefit the public by facilitating the means of borrowing money at a moderate rate to relieve their wants or promote their interest, but when by distress and poverty a man becomes enslaved to the imperious necessity of borrowing, and has not the power of deliberating with unbiassed freedom upon the terms proposed by the lender, he falls under that tutelary protection of our courts of justice, which they so humanely hold over infants and others, who are disabled to bind themselves. So far then do they appear, as Mr. Bentham argues, to operate injustice by checking the natural freedom of the lender in his bargain, that on the contrary they tend generally to promote and ensure the real grounds of social freedom, which are philanthropy benevolence and charity.

I here think it necessary to premise, that all the cases, which turn upon Annuities will be reserved for the Second Part of this work, which will be confined to that subject. Our first consideration then will be, What acts and contracts the courts have determined to be usurious?

The statute  
operates up-  
on old of-  
fences.

1st. It is obvious, that to whatever act the statutes upon Usury affix penalties or punishments, that act must be usurious in it's nature:

Now



Now I perfectly agree with Mr. Bentham<sup>1</sup>, that “were it not for custom, *Usury* (as now commonly understood,) considered in a moral view would not then so much as admit of a definition: so far from having existence, it would not so much as be conceivable.” As *property*<sup>2</sup> itself is emphatically the creature of the state, of course every modification and regulation of that property must depend exclusively upon the state. If any act therefore be in this country usurious, it must be so either by the common law or by the statute law. As the latter is expressed in writing, no act can become *thereby* usurious, unless the statute which rendered it so be known. The full effect then of the existing statutes upon Usury I conceive to be, the affixing of new punishments to old offences: for so far are they from creating new offences, that their direct intention and operation is to diminish the common law offences by permitting or allowing of a certain degree or rate of that practice, which the common law forbade *in toto*. Until the act of Henry VIII allowed of the taking of 10 per cent. for the forbearance of money, by common law no one

<sup>1</sup> Defence of Usury, p. 9.

<sup>2</sup> I always beg to be understood to speak of permanent and transferable property.

PART I.  
CHAP. V.

Corrupt  
contract and  
corrupt tak-  
ing without  
such con-  
tract.

could take 1 per cent. For the fair and legal interpretation then of these statutes, we must endeavour to ascertain what acts are by common law Usurious, to which the statute law attaches it's effects : and it must be remembered, that the acts of Henry VIII, Elizabeth, James, Charles, and Queen Anne, are all subsisting and unrepealed to this hour.

At present a person may by common law be guilty of Usury both by entering into a corrupt bargain or agreement to take more Interest than the statute law allows, and by actually taking such excessive Interest, although no such agreement had been made. The statute of Anne created neither of these offences but punishes them both in different ways ; the first, by annulling the security entered into : the 2d, by giving treble damages. Thus in the case of *Fisher qui tam, &c. v. Beasley*<sup>1</sup>, which was an action of debt on the statute of Anne for taking more than 5 per cent. on a loan of 100l. for six months, a premium of two guineas was paid on the advance, and 2l. 10s. Interest paid with the Principal at the end of the six months. Lord Mansfield was of opinion at the trial (the action having been brought within twelve months from the taking of the Interest but not of the premium,) that the Usury was complete

<sup>1</sup> Dougl. 223. Trin. 19 Geo. III.

and the penalty incurred, when the premium was paid, and therefore nonsuited the plaintiff. However upon motion for a new trial, his Lordship altered his mind and said, "I am now satisfied, as we all are, that the offence was not complete till the half year's Interest was received. *There are two branches of the statute.* Under the first every agreement contract and security for more than legal Interest, is void. Therefore the bond given to the defendant in this case was void. But under the second the penalty is incurred only by taking accepting and receiving more, than legal interest. All the authorities lean this way both ancient and modern<sup>1</sup>. In *Lloyd and Williams* more than legal interest had been paid at first."

In this case of *Lloyd and Williams* 6l. 5s. had been taken for the loan of 100l. for three months. An action *qui tam* upon the statute was brought above twelve months after the receipt of the 6l. 5s. ; but not twelve months after the re-payment of the principal: and the point decided by the court was, that *by the corrupt bargain and the taking of the 6l. 5s.* that offence or Usurious act was consummated, for which the statute gave treble damages and that the year ran from such consummation. Lord Chief Jus-

Corrupt  
bargain and  
taking of  
more than  
legal interest  
completes  
the offence,  
for which  
the statute  
gives treble  
damages.

<sup>1</sup> Reported very much at large in 3 Wils. 250, and more briefly in 2 Blackf. 792.



PART I.  
CHAP. V.

Lord Chief  
Justice De  
Grey's opi-  
nion that the  
Common  
Law sur-  
vived the  
37th Hen.  
VIII.

Co-opera-  
tion of the  
Common  
Law with  
the Statute.

tice De Grey, who on this occasion went very fully into the nature of Usury, in speaking of the act of 37 Henry VIII, seems pointedly of opinion, that this statute did not abolish the common law of Usury, and that the offences of Usury by *common law* are more multifarious than those of Usury by the statute<sup>1</sup>. “There is no  
“ mention made in this statute of the loan of  
“ money: the offence intended to be punished  
“ seems to be *the taking in gains* for the for-  
“ bearing of one year for his money, or other  
“ thing, that shall be due for the same wares  
“ or other things above 10l. in the 100l.;  
“ it’s not said for *money lent*, or the Use or  
“ Interest of *money lent*: so that it seems, as if  
“ it was then *still penal to take any Interest, even*  
“ *five per cent. for the loan of money.*” It could  
then only have been penal by *common law*, for  
the act of Henry VIII evidently repealed all  
statutes affecting the subject.

I have before observed, that none of the exist-  
ing statutes of Usury created any new offence,  
but on the contrary rendered many things law-  
ful, which were before criminal, and annexed  
new punishments to old offences. If therefore  
the statute give treble damages, where excessive  
Interest has been corruptly taken, it seems clear  
that the excessive taking is still criminal by com-  
mon law and open to all the remedies, to which  
it

<sup>1</sup> 3 Will. 261.

it was liable before the statute gave treble damages. For if the common law be abolished, the statutes would rather protect and countenance, than check and punish the crime of Usury. Lord Chief Justice De Grey said in *Lloyd v. Williams*<sup>1</sup>, "To constitute the offence, for which the present action is brought, to recover treble the value of the money lent, these three things must concur, 1st, A contract between the parties; 2d, monies or other things lent; 3d, above 5 per cent. per annum received by the lender for the forbearance." If then a person taking more than 5 per cent. without any previous contract to that effect, cannot be punished under the statute for want of this condition, it is evident that the statute will encourage and screen, rather than prevent or punish the Usurer. It appears from the following cases, that the different acts, to which the statutes apply their effects are by the common law Usurious and differently affected by the statutes, although they do not constitute that complex offence, for which the statute according to Lord Chief Justice De Grey gives treble damages. Under the greatest deference however to that great man's opinion, I think it highly important to consider minutely the nature spirit and principle of the following cases.

In

<sup>1</sup> 3 Will. 261.

PART I.  
CHAP. V.

Corrupt  
agreement  
without  
taking for-  
feiture.

Taking  
without cor-  
rupt agree-  
ment, no  
avoidance of  
the security.

In <sup>1</sup> *Brown and Fulbye* a man took a bond from another for the payment at the end of the year of a certain sum with excessive Interest: yet if he only took the Principal with legal Interest, *it is not Usury within the statute to make a treble forfeiture*, but yet in that case, the obligation itself is void<sup>2</sup>. And I presume, the contract being in this case Usurious by common law, no action could be maintained by the obligee for the money, though the avoidance of the bond be expressed by the statute. On the other hand, <sup>3</sup> it was said by North Chief Justice, “that if a man take a bond legally for the payment of lawful Interest, but if afterwards he actually take more than the legal Interest, this doth not avoid the bond: but the party is liable to an information upon the statute for taking more than the statute allows.”—<sup>4</sup> “But to avoid a security by reason of Usury, the contract itself must be Usurious.”

It is material to remark, that it was expressly said by Twisden <sup>5</sup> 22 Car. II, “There are two clauses in the statute of Usury: if there be a

<sup>1</sup> 4 Leon. 43.

<sup>2</sup> With this also agrees the case of *Body v. Tassell*. 3 Leon. 205.

<sup>3</sup> 1 Freeman, 253.

<sup>4</sup> 2 Mod. 307.

<sup>5</sup> 3 Mod. 69.

“ corrupt



“corrupt agreement at the time of the lending  
 “of the money, then the bonds and all the  
 “assurances are void: but if the agreement be  
 “good, and afterwards he receives more than  
 “he ought, then he forfeits the treble value.”  
 Here the difference is most clearly drawn between the guilt and punishment of contracting Usuriously and of taking Usurious encrease without any previous corrupt agreement. This seems rather inconsistent with Lord Chief Justice De Grey’s opinion in *Lloyd and Williams*, that to constitute the offence, for which the treble value of the money lent can be recovered the three before mentioned conditions should concur. Nor does the case of the <sup>1</sup> *King v. Walker* tally with this doctrine of Lord Chief Justice De Grey, although the case of *King v. Upton* <sup>2</sup> in part does. “After a verdict *pro Rege* on an indictment for Usury: Strange moved in arrest of judgment, that they had

<sup>1</sup> Sid. 421. It is also reported as anonymous 1 Vent. 38.

<sup>2</sup> Strange 816. If this report be accurate: the process against *Upton* by indictment was *by common law*, and not by statute: therefore the common law concerning Usury survived the statute of Henry VIII, notwithstanding Coke’s opinion. Viner, *Usury*, L. II. says “No indictment will lie on the statute of Usury: for the method the act prescribes must be followed: therefore the indictment must be quashed.” 11 Mod. 174. fol. 17. Pasch. 7 Ann. R. R. The Queen “v. Dy.”

“only

PART I.  
CHAP. V.

How the  
taking of  
excessive In-  
terest pu-  
nished with-  
out any cor-  
rupt agree-  
ment.

“ only laid a corrupt agreement, without any  
“ loan or excessive taking Interest in pursuance  
“ of it : and the judgment was arrested.”

The case of the *King v. Walker* was an infor-  
mation brought against Walker upon the statute  
of Usury for having on the 30th May taken  
*per viam corruptæ contractûs accommodationis* more  
than legal Interest for forbearance of 25l.  
for nine months. Upon Not Guilty pleaded;  
verdict for the King, and moved in arrest of  
judgment, That this was not within the statute,  
which extends only, where there was an usu-  
rious contract in the beginning, and there it  
makes the security void ; but here there was no  
such corrupt agreement before or at the time of  
the loan : the time of forbearance (for nine  
months) was past, and it was contended, that the  
party might give what he pleased in recompence  
for it, there being no precedent agreement to  
enforce him to it.

Ventris reports the determination of the court  
upon this case differently from Siderfin : the  
former says : “ *Sed non allocatur* : for the court  
“ said, they would expound the statute strictly:  
“ and if liberty were allowed in this case, the  
“ brokers might oppress the people exceedingly  
“ by detaining the pawn, unless the party  
“ would give them what they would please  
“ to

"to demand for the time after failure of payment.

PART I.  
CHAP. V.

Siderfin says: "Mes per curiam, judgment sera vers W, ceo nient obstant; car si n'est bien ley a doner judgment vers luy sur stat. 12 Car. II. c. 13. a paier le treble del argent lent, unc est trove que per corrupt contract il prist tant, et per ceo il done judgment vers luy *al common ley* scil. fine et imprisonment."

J dgment on  
Usury by  
common  
law.

Although upon these different reports of the same case it may be difficult to say, that an information would not lie upon the statute for the mere taking of excessive Interest without a previous corrupt agreement; yet from Siderfin's report it appears evident, that neither the court nor the reporter were of the opinion of Coke, that the common law concerning Usury was abolished; otherwise they could not have said, and *for this they give judgment against him at common law, viz. fine and imprisonment*. Does not this prove, that the taking of excessive Interest is cognizable and punishable at common law? Walker did not traverse the taking, but only the *corrupt contract* for taking illegal Interest: and the statute of Charles II does not inflict the penalty of fine and imprisonment for taking excessive Interest: and upon that statute was the information founded.

It would not follow, even if the three conditions put by Lord Chief Justice De Grey in

Examina-  
tion of Lord  
Ch. J. De  
Grey's opi-  
nion.



PART I.  
CHAP. V.

in *Lloyd and Williams* were necessarily to concur for completing that Usurious offence, for which the statute gives treble forfeiture, that therefore the crime of Usury cannot be completed to many other purposes without their coincidence. We will consider the effects of the first condition, which is the *corrupt contract*, without the concurrence of the other two. The *common law* says, no action shall be maintained upon such contract: the *statute law* says, that the very contract alone avoids the security. <sup>1</sup> It was necessary, that this should be done by act of parliament, for notwithstanding <sup>2</sup> in ancient times the persons of Usurers without doubt were punished, yet said Chief Justice Lea the contract made by the Usurer was notwithstanding not made void: *le contract fait par Usurer ne fuit disanull nient obstant*. And it is said <sup>3</sup>, “*Home ne poissoit al common ley maintenir une action sur un Usurious contract.*”

No action  
would lie at  
common  
law for any  
Usury or In-  
terest.

There can be no question, but that the common law, which forbade all Usury was, as I have before urged, grounded in the general prepossession of Usury's being against the law of nature, and therefore was it expressed in the 11th of

<sup>1</sup> Hawk. Pl. Cor. of Usury, sect. 8, ch. 82.

<sup>2</sup> Palm. 294. Saunderfon and Warner. Trin. 20 Jac. reported also 2 Roll. 239.

<sup>3</sup> 2 Roll. Ab. 801, quotes 26 Edw. III. 71.

Henry VII to be *against natural justice*. And it appears about the close of the reign of Jac. I. to have been the general opinion, that the common law concerning Usury was then existing and operative; for in the case of *Oliver and Oliver* it was holden by three Judges against one, that *use voidera contract al common ley*: and in the same case it was agreed by Dodderidge and Whitelock (*absentib. al.*) that at that day the Interest of money was no good consideration, because it was against the law of nature. And although the court came to no determination in the case of *Saunderson v. Warner*, as to the point before them; yet Lord Chief Justice Lea<sup>1</sup> expressed himself in this manner: “The Usury  
 “condemned by the common law was a common  
 “trade of biting Usury, such as was practised  
 “by the Jews; and were therefore called *Anglicè*  
 “*Judaizantes*: and when indicted were to lose  
 “all their property. But this Usury of ten  
 “per cent. is not such Usury as was condemned;  
 “but it was tolerated, if a man chose to en-  
 “danger his conscience. Besides, the divines  
 “are not yet agreed, whether all Usury be not  
 “unlawful: and in this case we ought to be  
 “informed by them: for some of them held  
 “that *gripping* Usury alone is forbidden. And  
 “if I lend money, and the borrower turn it

<sup>1</sup> Palm. 292.

PART I.  
CHAP. V.

“to profit, I may then lawfully demand Interest (or Usury): but if the borrower be not able, then I can demand nothing for it. This court (B. R.) likewise alone can prohibit the ecclesiastical court from meddling with the punishment of Usury: and now all the courts of equity and the jurors assess damages according to the rate of ten per cent.” This opinion of Lea goes to shew, that he conceived the common law not abolished, but only controlled to a certain rate or degree by the statute. Dodderidge however *held firmly* (fortementient) *that every degree of Usury was against the common law and the law of God.*<sup>1</sup>

Leading  
principles of  
Usury.

The grand pervading principles, which affect all possible cases of Usury are fairly and explicitly set forth by Lord C. J. De Grey in *Murray v. Hardinge*.<sup>1</sup> “It is essential to the nature of

<sup>1</sup> I know not how to reconcile that saying of Lord Chief Baron Hale, which Judge Burnet in *Chesterfield v. Jansen* quoted from Hardres 420, *that Jewish Usury only which was 40 per cent. and more was prohibited by common law, but no other*, with what has been so repeatedly determined by the Courts and appears so plain upon the face of the different statutes. On this occasion I cannot help diffiding more in the fidelity of the Reporter, than in the accuracy of this great Judge. At all events it is but a *dictum* of a Judge and no determination of the Court.

*Vid. also my Note at the end of the Second Chapter.*

<sup>1</sup> 2 Black. Rep. 862. and 3 Will. 395.



"an usurious contract, that there must be *imo*,  
 "a loan. *2do*, That *illegal* Interest is to be paid  
 "for such loan. It is essential to the nature of a  
 "loan, that the thing borrowed is at all events  
 "to be restored. If that be *bona fide* put in  
 "hazard, it is no loan, but a contract of  
 "another kind. So also if illegal Interest is to  
 "be certainly paid or even upon a reasonable  
 "possibility, the contract is usurious." And  
 "as on the one hand no colour or shift will pro-  
 "tect a real usurious loan, so on the other no  
 "inequality of price will condemn a fair and  
 "real hazard."

Clear and explicit as all the acts against Usury  
 appear, numberless have been the attempts to  
 evade their effects. But says Lord Mansfield,  
 in *Floyer and Edwards*\*, "In all questions in  
 "whatever respect repugnant to the statute, we

Attempts to  
 evade the  
 statute.

\* It is requisite to remark, that the possibility, or even the  
 probability of the borrower's becoming insolvent is not that  
 species of hazard which will keep a contract or loan out of the  
 statutes of Usury. As Lord Kenyon observed in the case of  
*Morse v. Wilson* (4 Term. Rep. 356.) "It has been argued  
 "that it is not an usurious contract, because the principal  
 "was put in hazard, as it was liable to the partnership cre-  
 "ditors: but it was no further hazarded, than in the case of  
 "every other loan, namely by the risk of the borrower's in-  
 "solvency." I shall also hereafter have occasion to speak ra-  
 ther fully on the question, Whether there can be Usury with-  
 out a loan?

*See post. 195.  
 4205.*

\* Cowp. 112.

PART I.  
CHAP. V.

“ must get at the nature and substance of the  
 “ transaction : the view of the parties must be  
 “ ascertained, to satisfy the court, that there is a  
 “ loan and a borrowing, and that the substance  
 “ was to borrow on the one part and to lend on  
 “ the other : and where the real truth is a loan of  
 “ money, the wit of man cannot find a shift to  
 “ take it out of the statute. If the substance is a  
 “ loan of money, nothing will protect the taking  
 “ of more than five per cent. And though the  
 “ statute mentions only for loan of monies,  
 “ wares, merchandizes or other commodities,  
 “ yet any other contrivance, if the subject of it  
 “ be a loan, will come under the word, *indi-*  
 “ *rectly.*” The application of these general prin-  
 ciples to particular cases, will be an ever sure  
 mode of determining whether contracts be or be  
 not usurious : although as Judge Blackstone ob-  
 served in *Murray and Hardinge*, *every case of Usury*  
*must depend upon its own circumstances.* Under-  
 valued annuities, improbable chances, remote  
 contingencies, over-rated sales or leases are the  
 general engines employed by those, who trade in  
 the evasion of these statutes. At present I shall  
 say no more of annuities, than that it may be  
 difficult to find many of them, that were not  
 granted upon the substance of a loan or accom-  
 modation of money, whatever form or mould  
 the negociation may have been thrown into. At

a time

a time when that system of annuities, which now yearly devours so large a part of our landed revenue, had scarcely assumed a visible form (A. D. 1745) the intuitive mind of Lord Hardwicke, seems from the then unformed conception, to have foreseen the exact form of the future inflation monster, that was to gorge and thrive upon the ruin of his countrymen<sup>1</sup>. "There has," said this great oracle of natural justice, "been  
"a long struggle between the equity of this  
"court, and persons, who have made it their  
"endeavour to find out schemes to get exorbi-  
"tant Interest, and to evade the statutes of  
"Usury."

Mr. Lawley, being a younger brother and rather extravagant had been necessitated to sell 150 l. per ann. out of an annuity of 200 l. which was his subsistence, for 1050 l. with a power of re-purchasing. And upon the question, Whether the assignment of the 150 l. per ann. were to be considered as an absolute sale or as a security or loan? Lord Hardwicke said "I think, (though  
"there is no occasion to determine it) there is a  
"strong foundation to consider it as a loan of  
"money, and I really believe in my conscience,  
"that 99 in a hundred of these bargains are  
"nothing but loans turned into this shape to

Mr. Law-  
ley's case.

<sup>1</sup> Lawley v. Hooper, 3 Atk. 278.



PART I.  
CHAP. V.

“avoid the statutes of Usury.” However his Lordship five years after this, said in the case of *Chesterfield and Jansen*,<sup>1</sup> “Courts regard the substance, not the mere words of contracts. Loans on a fair contingency to risk the whole money are not within the statute. A man may purchase an annuity as low as possible, but if the treaty be about borrowing and lending and the annuity only colourable, the contract may be usurious however disguised.” But of Annuities I shall speak more fully hereafter, continuing at present my enquiry into the nature of such acts and contracts as the courts have determined to be usurious, and in this attempt my object will be rather to lay down the general principles, which have governed the different determinations of the courts, than to extract new principles out of a great variety of cases. To follow up what those two great men Lord C. J. De Grey and Lord Mansfield said, the former in *Murray v. Hardinge*, “As on the one hand no colour or shift will protect a *real usurious loan*, so on the other no inequality of price will condemn a real and fair hazard;” and the latter in *Floyer and Edwards*, “Where the real truth is a loan of money, the wit of man cannot find a shift to take it out of the statutes;” we will endeavour to see how in the various attempts by

<sup>1</sup> 1 Will. 295.

monied men to procure more than legal Interest, their efforts have been countenanced or baffled by the application of these principles to the particular cases.

One ordinary attempt to evade the statutes of Usury has been, by furnishing the person wanting the money with goods wares or merchandize at the price fixed upon them by the lender or the person undertaking to accommodate the borrower, and he by a subsequent sale (perhaps to a fair chapman, though more likely to the accommodator's agent) raises the money he wants, though he sustain much loss upon the second sale; as was the case of *Low and others v. Waller*,<sup>1</sup> where upon a negociation for a loan of money the lender said he could not advance cash, but would furnish goods, which the borrower took and sold by the intervention of a broker recommended by the lender, and upon the issue of the negociation Waller instead of 200l, which he meant to borrow received only 117l. 2s. 2d. The question, Whether the transaction were a loan of money for more than five per cent. under colour of a sale of goods? was left to the jury, who found the contract to be usurious. Upon application afterwards for a new trial, the court refused it; on which occasion Lord Mansfield observed, that "before the statute of Henry VIII,

Furnishing  
goods instead  
of lending  
cash usuri-  
ous. *Low v.*  
*Waller.*

<sup>1</sup> Dougl. 712.

PART I.  
CHAP. V.

“ all Interest on money lent was prohibited by  
 “ the Canon law, as it is now in Roman Ca-  
 “ tholic countries<sup>1</sup>. This gave rise to many  
 “ shifts and devices to evade the law. One,  
 “ which was then the most common, was pro-  
 “ vided against by that statute: but the prohibi-  
 “ tion being confined to that particular sort of  
 “ transaction, Usurers were thereby put upon  
 “ other contrivances: and experience taught  
 “ the Legislature, in the more modern statutes,  
 “ not to particularize specific modes of Usury  
 “ (because that led only to evasion) but to enact  
 “ generally, that no shift should enable a man to  
 “ take more, than legal Interest upon a loan.  
 “ Therefore the only question in all cases like  
 “ the present, is, What is the real substance of the  
 “ transaction? not What is the colour and form?  
 “ This is one of the strongest cases I ever knew  
 “ litigated. It is impossible to wink so hard, as

<sup>1</sup> It is wonderful, that Lord Mansfield should in this instance have deviated from his usual accuracy; whereas it is notorious, that by the laws of most Roman Catholic countries of Europe a certain rate of Interest was allowed upon the loan of money. This may be seen fully proved in the 3d volume of *Traité de Prêts de Commerce* with reference to the laws of those princes of Italy, who succeeded the Roman emperors and of all the Italian states from the 12th century to the present, of the Visigoths in Spain, of modern Spain and Portugal, of Germany, of the Austrian Netherlands, of France, &c. &c.

“ not



"not to fee, that there was no idea between the  
 "parties of any thing but a loan of money."

PART I.  
 CHAP. V.

A like case,  
 Barker v.  
 Vansom-  
 mer.

Upon the like principle also was determined  
 the case of *Barker v. Vansommer and others*<sup>1</sup>,  
 where Barker a student of Wadham College had  
 applied to Alcan a Jew to raise him a sum of  
 money; Alcan recommended one Pritchard and  
 Pritchard introduced him to Vansommer, who  
 let him have goods to the amount. Alcan at-  
 tended and recommended the choice of the silks,  
 for which Barker gave his note for 2224l. at  
 twelve months date. The silks were afterwards  
 bought by one Ribot for about half the price  
 given for them by Barker. The note was af-  
 terwards indorsed over by James Vansommer and  
 Paul the silk-merciers to John Vansommer the  
 silk-throwster in the settlement of an account,  
 who was completely ignorant of the transaction  
 with Barker. Upon Barker's application to the  
 court to compel the delivery up of the note, on  
 payment of what the silks actually produced, the  
 Chancellor said, "I am to enquire whether un-  
 "der the mask of trading, this is not a method  
 "of lending money at an extraordinary rate of  
 "Interest, and there is not a doubt, that in this  
 "case the transaction was merely for the purpose  
 "of raising money, to supply the necessities of  
 "this young man. Do they deny knowing the

<sup>1</sup> 1 Bro. C. C. 149.

"goods

PART I.  
CHAP. V.

Similar  
cases. Cecil  
v. Sutton and  
Roundtree.

Lord Pol-  
warth v.  
Cooke.

“ goods were to be sold? I take it therefore as  
“ an advancement of goods instead of money to  
“ supply his necessities.”

In arguing this case several other cases of a like tendency were mentioned; as that of *Cecil v. Sutton and Roundtree* in the Exchequer, where the defendants supplied the plaintiff with goods in order to enable him to take up a note, and the court granted an injunction till the amount, for which the goods sold should appear. In *Lord Polwarth and Cooke*, his Lordship had applied for the loan of 150l. and Cooke gave him 60l. a gold watch and a Cremona fiddle: and the court ordered the securities to be given up upon repayment of what was obtained by sale.

Davison v.  
Barnard  
Pitt.

It will be endless to specify all the different modes and contrivances, which have been devised by Usurers to evade the statute, but they all fall within the invariable principle, that no contrivance shall screen a corrupt intention of taking more, than the statute allows. Thus in *Davison v. Barnard Pitt*<sup>1</sup>. A applied to B for the loan of 1500l. on mortgage: B said his money was in the funds, and that he had purchased at 75: if therefore A would take stock at that valuation, he would transfer as much as

<sup>1</sup> Esp. N. P. 1. Pasch. 33 G. 3.

would

would amount to that sum: which he did and A gave a mortgage accordingly for 1500l. A lost two and a half per cent. on the sale of the stock. The executor of B could not maintain an ejectment upon the mortgage deed. For in fact the deed was void by the statute: and moreover no action could be maintained on a contract usurious at common law. So was it again determined in *Pratt v. Willey*<sup>1</sup>, that if the discounters of a bill of exchange make the holder take goods at a higher price, than they are worth upon a fair estimate, it is Usury.

*Pratt v.*  
*Willey.*

But in the *Duke of Ancafter v. Pickett*<sup>2</sup>, the court refused to relieve the Duke, who had purchased jewels of Pickett and had sold them again for less money: but these jewels were sold in the common course of trade, and not with any view of accommodating his Grace with the means of raising or borrowing money upon them. The contrivance of evading the statutes of Usury by these sorts of sale are so frequent and various, that Lord Mansfield in summing up to the jury in the case of *Low v. Waller*<sup>3</sup> said, *that the most usual form of Usury was a pretended sale of goods.* And upon that same occasion this great man delivered a very short comment upon the Act of Usury (viz. 12 Ann.) which is the most satisf-

*Duke of*  
*Ancafter v.*  
*Pickett.*

<sup>1</sup> Esp. N. P. 40. Sit. aft. Mich. 34 G. 3.

<sup>2</sup> 1 Bro. c. c. 151. <sup>3</sup> Doug. 708.



PART I.  
CHAP. V.

factory answer to the objections urged by Mr. Bentham against the laws of Usury, as breaking in upon the liberty and defeating the interest and advantage of individuals. "The statute of Usury  
" was made to protect men, who act with their  
" eyes open : to protect them against themselves.  
" Upon this principle it makes it penal for a  
" man to take more, than the fixed rate of In-  
" terest : it being well known, that a borrower  
" in distress would agree to any terms."

Every ex-  
cess of legal  
interest usur-  
ious, whe-  
ther in mo-  
ney or  
value.

Every act will be usurious under the statute, where the lender takes a larger profit upon the loan, than the fixed rate of Interest, whether such profit arise from money or otherwise, or whether there were any contract with relation thereto or not<sup>1</sup>. As where one in possession of land made over to him for the security of a certain debt retains his possession after he has received all, that was due from the profits of the land. So, Lord Hardwicke said, in *Adlington v. Cann and Andrews*<sup>2</sup>, "Suppose a mortgage to be drawn  
" only for 5 per cent. and the mortgagee takes  
" six, it would be void upon the word *take*<sup>3</sup>.  
" It is the same, whether the whole be reserved  
" by way of interest or in part only under that  
" name, and in part by way of rent for a house,

<sup>1</sup> Hawk. P. C. Lib. I. c. lxxxii. Gibs, 1070.

<sup>2</sup> 3 Atk. 154.

<sup>3</sup> Hawk. Pl. C. 533. Lib. I. c. lxxxii.

"let at a rate plainly exceeding the real value." According to this it was said by the counsel in *Jestons v. Brookes*<sup>1</sup>, and by the determination assented to by the court. "A contract is not less usurious, because no Interest is reserved upon the sum advanced, if something also, as a horse, &c. the value of which exceeds the legal rate of Interest, is substituted in it's stead<sup>2</sup>." Yet it does not follow, that every advantage or profit arising out of a loan, which exceeds 5 per cent, is therefore necessarily usurious

In the case of *Floyer v. Edwards*<sup>3</sup>, the ground of the action was; that the plaintiffs, who were gold-refiners, had advanced gold wire to others in the same trade, upon the terms of paying such a price, if the money were paid within three months; and if not, then to pay at the rate of an halfpenny an ounce per month over and above the price agreed for; which in fact upon calculation exceeded the rate of 5 per cent. This at the trial was found to be the constant usage of the trade. A verdict was found for the plaintiff and a question reserved for the opinion of the court, *whether this contract were Usury*. Under all the circumstances, *especially the constant usage of the trade*, the court was of opi-

According to the usage of certain trades more than 5 per cent. may be paid.  
*Floyer v. Edwards.*

<sup>1</sup> Cowp. 795.

<sup>2</sup> Cro. Jac. 440. *Bede v. Sanderfen*.

<sup>3</sup> Cowp. 112. and Loft. 595.

PART I.  
CHAP. V.Plumbe v.  
Carter.

nion, that it did not amount to Usury within the statute. Very soon after this another case was tried upon the same grounds in an action for money had and received before Lord Mansfield at the sittings after Trinity term 1775, in *Plumbe v. Carter*<sup>1</sup>. The defendant had paid into the court the Principal and Interest at 5 per cent. from the time of his bargain, and the single question was, whether the excess of Interest should be paid? It appeared manifestly at the trial, that this excess was only to be taken in case of delay of payment at the end of three months, and for no other reason whatever. The vendee was at liberty to have paid the Principal at the expiration of that time. "I ruled," said Lord Mansfield at Guildhall, "that the transaction ought to be considered *as not Usury* within the statute. But the law of the land having declared, that 5 per cent per annum was sufficient for delay of payment, I was of opinion that the demand of the surplus was an exorbitant demand, and therefore ought not to be recovered in an action *for money had and received*," which at the trial his Lordship said, "was an equitable action and founded in conscience under the particular circumstance of each case." Accordingly the jury found for the defendant.

<sup>1</sup> Cowp. 116 and 796.



PART I.  
CHAP. V.

Every attempt to get more than the statute allows is Usury.  
*Jestons v. Brooke.*

In *Jestons v. Brooke*<sup>1</sup>, one broker had borrowed of another on a note of hand 45l. on demand, to purchase certain goods, that were then on sale, on condition of halving the future profits upon the re-sale. The goods were purchased and re-sold for 5l. profit: the lender demanded his money within two hours after the lending, which made it carry Interest: and the action was brought for 2l. 10s. over and above the Principal and Interest: the plaintiff was nonsuited: for Lord Mansfield was of opinion, in which the three other Judges concurred, "that the intention of the contract was to get more than Principal and legal Interest upon the note, *which is Usury* within the meaning of the statute." And he said on the same occasion: *There is no contrivance whatever by which a man can cover Usury.*

Although from the length of time, which has elapsed since the passing of the last act of Usury under Queen Anne, it may be presumed, that no sums of money are still secured under agreements entered into before that time; yet as for keeping up the price of the funds, or for other reasons, which induced a late noble peer to lay it down as an axiom, that *the lower the legal Interest of money, the more conducive to public good*, it appears not improbable, that the legal Interest

The statute does not operate retrospectively.

<sup>1</sup> Cowp. 793.

may

## PART I.

## CHAP. V.

Usury often depends upon the intention of negotiating parties.

may be soon lowered to 4 per cent, it may not be altogether useless to remark, that “<sup>1</sup> a contract before the statute is no way within the meaning of it, and therefore, that it is still lawful to receive 6 per cent. in respect of any such contract.”

It is also to be observed, that in many money transactions the intent and spirit of the parties will either infect or not the contract with Usury. As if a borrower meaning to borrow at Interest applies for the loan: and the lender says, No; but I will sell you corn lead or tin and give day for payment at a rate, that exceeds the statute allowance; or I will, to avoid the statute, purchase a rent or annuity, that shall be equivalent to the Interest I require above the allowance by law: all such cases are deemed usurious<sup>2</sup>: and in the latter case particularly, the Chief Baron Bell said, <sup>3</sup> *this is Usury although he never has his Principal again*. Hence we may conclude, that there may be Usury, where the annual payments are not merely made for giving day of payment, which seems to enlarge the nature of Usury, (such as I conceive it to be by common

<sup>1</sup> Hawk. Pl. C. 1 L. c. lxxxii. sec. 10. How long the contrary opinion was holden, vid. Vin. vol. xxii. 296, and *Walker v. Penry*, 2 Vern. 42, &c.

<sup>2</sup> Vin. Usur. 297, cites Mo. 398. Pl. 520. Wicke's Case.

<sup>3</sup> *Tanfield v. Finch*, Cro. El. 27.

law) beyond what it strictly is within the statute. And hence does it also appear, that every case of Usury must stand upon it's own bottom.

PART I.  
CHAP. V.

The nature and extent of our national commerce necessarily multiply and diversify money transactions, which hold out almost irresistible temptations to monied men to take advantage of the wants and distresses of others. The courts however are scrupulously vigilant, in protecting the borrowers from the consequences even of their own improvident importunity and perhaps sometimes beneficial accommodation. The smallest excess therefore of Interest taken beyond the statute allowance renders the taker of it liable to the same rigor and penalties, as if he had been guilty of the most cruel and unjust oppression. In an information by *Mallory v. Bird*<sup>1</sup>, it was said, "If one contracts to have 20l. for the loan of 100l., if he taketh nothing of the 20l. he is not punishable by the statute: but if he taketh any thing, if but one shilling, this is an affirmation of the contract, and he shall render for the whole contract."

No degrees  
of guilt in  
Usury.

Nothing can more strongly mark the nice precision, to which the courts have kept the cases upon Usury by the statute, than the division of the Bench in the case of *Barnes v. Wor-*

The Interest  
ought not to  
be with-  
drawn out of  
the Principal  
for then the  
whole is not  
advanced.

<sup>1</sup> Cr. El. 20.



PART I.  
CHAP. V.Barnes v.  
Worlick.

*lick*<sup>1</sup>. Upon issue directed out of Chancery, the following case came before the King's Bench. Bond for 100l. in twelve months, at 10 per cent. payable half-yearly : and the question was, Whether it were not Usury to receive the 5l. at the end of the six months ? Fenner and Yelverton held, that when he lent his money for a year, he ought to forbear his Interest for a year, and therefore it was Usury to receive any part of the Interest before the expiration of the year. Popham, Gawdy and Williams held the contrary, (which is the true opinion,) for in the whole he did not receive more than 10 per cent. per annum. And Coke attorney-general said, he knew it to be judged accordingly. It is also to be remarked, that in this same case it was said, " that if he had agreed to take his money " for the forbearance instantly when he lent it, " *that* had made the assurance void : for then he " had not lent the entire sum for one year, and " the other had not the use of his money according to the intention of the law. And " *Williams* said he knew upon this difference, " it hath been so resolved of late time."

Contradicted by Blackstone, in *Lloyd v. Williams*.

Upon these principles are to be determined all the cases upon discounting notes and bills. In *Massa v. Dawling*<sup>2</sup>, a person paid 197l. for

<sup>1</sup> Cr. Jac. 25. Yelv. 30. 1 Rol. 510.

<sup>2</sup> 2 Str. 1243.

a note of 200l. which had three months to run, and at the expiration of that term took another note of 200l. upon advancing 3l. more for other three months. And upon issue out of Chancery, Lord Chief Justice Lea held it Usury. But in the case of *Lloyd v. Williams*,<sup>1</sup> Judge Blackstone said, "he conceived that Interest "may as lawfully be received before hand for "forbearing, as after the term is expired for "having forborn. And it shall not be reckoned "as merely a loan of the balance; else every "broker in London, who takes 5 per cent. for "discounting bills, would be guilty of Usury. "For if upon discounting a 100l. note at 5 per "cent. he should be construed to lend only 95l. "then at the end of the time he would receive "5l. Interest for the loan of 95l. Principal, "which is above the legal rate."

Yet in the case of *Auriol and another v. Thomas*<sup>2</sup>, it was determined that in discounting notes the common usage of charging something for trouble &c. beyond the rate of legal Interest was not usurious, provided no corrupt bargain were made for taking usurious Interest. In this case Buller J. said, "*Benson and Parry* at Hereford was determined on a mistake; but when it was more maturely confi-

In discounting bills extra charge allowed for trouble, &c.

<sup>1</sup> 2 Blackst. 793.

<sup>2</sup> 2 Term. Rep. 32.

PART I.  
CHAP. V.

“ dered by this court on a motion for a new  
 “ trial, they were unanimously of opinion, that  
 “ extra charges might be allowed, though they  
 “ amounted to more than 5 per cent. if they  
 “ were fair and reasonable, and not as a color  
 “ for Usury; and there a new trial was granted.  
 “ This doctrine was again recognized in two  
 “ *Nisi Prius* cases, the one before Lord Chief  
 “ Baron Eyre on the circuit, the other before  
 “ me at the sittings at Westminster. So that it  
 “ is now clearly settled, that the party is en-  
 “ titled not only to take 5 per cent. for legal  
 “ Interest, but also a reasonable sum for remit-  
 “ tance and other incidental expences, &c.”  
 Grose J. observed, “ that the same doctrine  
 “ had been confirmed in the Common Pleas.  
 “ And the line, which has been taken, is, that  
 “ if the sum charged be not a color or a screen  
 “ for Usury, but is only fair and reasonable, it  
 “ ought to be allowed. This is like the case  
 “ some few years ago, where the Indian Interest  
 “ (viz. 9 per cent.) was allowed here on a bond  
 “ given in India.” That was the case of *Bodily*  
*v. Bellamy*<sup>1</sup>. The case which Buller J. re-  
 ferred to, as determined before himself, was  
 that of *Winch qui tam v. Fenn*, Sittings after  
 Hillary 1786, B. R. In an action for Usury  
 against the defendant, a banker at Sudbury, it

<sup>1</sup> 2 Bur. 1094.

appeared,



appeared, that it was their constant usage to discount bills in London for their correspondents at Sudbury, and for which the bankers charged beyond the legal interest for the time the bills had to run 5s. per cent. on the gross sum, without any reference to the time, which the bills had to run. The Jury found for the defendant under the Judge's direction.

PART I.  
CHAP. V.

Notwithstanding it were enacted by the 13th of Elizabeth, that the act of 37 Henry VIII thereby revived should be most largely and strongly construed for the repressing of Usury, and against all persons, that shall offend against the true meaning of the said statute by any way or device directly or indirectly, yet have the courts gone very great lengths in keeping certain transactions out of the statutes, which upon the most cool minute and impartial review appear to fall directly within the spirit and principles, upon which Usury is at all prohibited: for if on account of the omission of a lender to pay off the sum borrowed at a given time, the lender may make a greater advantage of his money, than the statute otherwise allows of: it must be admitted, that the prohibitory law will become *felo de se*: it's avowed object is to protect the indigent and the distressed from being oppressed by the exorbitant demands of opulent lenders. And yet, the law in this case converts the very indigence of

Of taking  
excessive In-  
terest upon  
nonpayment  
at a given  
day.

PART I.  
CHAP. V.

the borrower, which is his inability to repay the money borrowed at the given time, into the formal justification of the borrower's raising his demands upon him above the ordinary rate, and thus taking legal advantage of his poverty and distress.

By this ceases that fostering protection, which the law professes to hold over the distressed: for the legality in such cases of taking more than five per cent. evidently arises out of the distress of the borrower, who is thereby disabled from redeeming or paying off the sum borrowed within the limited time. As I profess myself incapable of reconciling these determinations of the courts with the principles, in which I conceive the laws against Usury are founded, I shall be particularly cautious in quoting the authorities, which command submission.

The power of the borrower to repay the Principal keeps it out of the statute.

Sergeant Hawkins in extracting the pith of the different determinations upon this subject says, “<sup>1</sup> That the reservation of a greater sum, “ than is allowed by the statute for Interest “ upon the non-payment of the Principal at the “ end of the year is not usurious within the “ statute, because it is in the power of the borrower to avoid the payment of the money so “ reserved, by paying the Principal at the day “ appointed: yet it seemeth clear, that if it were

<sup>1</sup> Hawk. Pl. C. 1 L. c. 8. S. 19.

“ originally

“originally agreed, that the principal money  
 “should not be paid at the time appointed, and  
 “that such clause was inserted only with an in-  
 “tention to evade the statute, the whole contract  
 “is void: for the construction of cases of this  
 “nature must be governed by the circumstances  
 “of the whole matter, from which the intention  
 “of the parties shall appear in the making of  
 “the bargain, which if it was in truth usurious,  
 “is void, however it may be disguised by a spe-  
 “cious assurance.” Is it possible even to con-  
 ceive an intention under such a contract, that  
 does not directly go to ensure more upon the  
 loan or the advancement of money, than legal  
 Interest? for if the lender intended to take no  
 more, why not express the rate of five per cent.  
 as well as a larger given sum? And is it possible  
 to invent a more specious and more effectual  
 mode of securing excessive Interest upon the loan  
 of money from a distressed man, than to lend  
 him without Interest for a short time a sum of  
 money, for which, if he repay it not at the given  
 period, he may be legally forced to pay the most  
 exorbitant rate of Interest, that shall have been  
 previously demanded of him. There are how-  
 ever several strong cases in support of this doc-  
 trine.

In *Burton's case* <sup>1</sup> 100l. were advanced and a

*Burton's*  
case.

<sup>1</sup> 5 Rep. 69.

N 4

rent



PART I.  
CHAP. V.

rent of 20l. per annum granted by the borrower to commence one year and a quarter after the money was paid, provided it were not repaid at the expiration of that time. So that if the grantor of the rent had paid the 100l. on the day appointed, the rent would have ceased, without any thing having been paid for the 100l. " So that the court said, it was a plain bargain " and purchase conditional of such rent and *no* " *Usury*. It was in the election of the grantor " to have paid the said 100l. and to have frus- " trated the rent, so that the grantee (as the na- " ture of *Usury* is) was not assured of any re- " compence for the forbearance of his 100l. for " a year, and the said rent of 20l per annum " is but a penalty to the grantor. and assurance " to the grantee for the payment of the said " 100l." <sup>1</sup> But it was resolved by the court, that if it had been agreed, that the money should not be repaid at the time, then indeed it would have been *Usury*. " And Popham Chief Jus- " tice said, that if A comes to B to borrow " 100l. : B lends it him if he will give him for " the loan of it for a year 20l, if the son of A " be then alive, this is *Usury* within the sta- " tute." This however would be *Usury* merely on account of the slighthness of the hazard and

<sup>1</sup> Brit. Usur. pl. 1. cites 29 Hen.VIII, Cumb. *Garratt v. Foot.*

the avowed intention of the party to evade the statute.

It was said in *Roberts v. Fremayne*<sup>1</sup> by way of elucidation of the case before the court "if "I lend to one 100l. for two years to pay for "the loan thereof 30l. and if he pay the Principal at the year's end he shall pay nothing for "Interest, this is not Usury: for the party hath "his election, and may pay it in the first year's "end and so discharge himself." Now who does not see, that the mere distress of the party, may in such a case render the demand of the most exorbitant Interest even *legal*? And how will it support the humane principle and spirit of the law by relieving or protecting the distressed: or as Lord Mansfield said, *by protecting men with their eyes open against themselves?*" For it is evident, that the person lending the 100l. under such a condition must have intended to take more than legal Interest upon the loan, and have confided when he lent the money, that the poverty of the borrower would secure to him the payment of his exorbitant terms.

I rest the propriety of these observations upon the case of *Moore v. Battie*<sup>2</sup>, which appears to me to overfet all the reasons and principles, upon which the case of *Burton* and such other cases

PART I.  
CHAP. V.

The poverty of the borrower in such cases the cause of excessive Interest being taken.

<sup>1</sup> Cro. Jac. 509.

<sup>2</sup> Ambler 371.

have

PART I.  
CHAP. V.

To take  
stock at par,  
and when it  
is under  
usurious.

Moore v.  
Battie.

have been determined. Dr. Battie at the request of Moore sold out 1000l. South Sea Annuities at a loss upon the whole of 76l. and took a mortgage for 1000l. from Moore at five per cent. reducible to four per cent, if the money were repaid in a given time. Dr. Battie afterwards sold out at Mr. Moore's request 1400l. South Sea Annuities at a loss upon the whole of 267l. 15s. and took another mortgage from Moore for 1400l. with Interest at five per cent. with a power to Moore to reinstate the 1400l. at any time within two years. Upon a bill for foreclosure, the Master reported the two principal sums of 1000l. and 1400l. with Interest and costs due thereupon; which having been paid by the plaintiff into court, he brought his bill (*inter alia*) for being paid the several sums of 76l. and 267l. 15s. with Interest insisting that the defendant ought to have been charged with them in the accompt. The defendant pleaded the proceedings under the decree in bar: and his plea on being argued was ordered to stand for an answer: and two questions were made. 1<sup>st</sup>. *Whether it were Usury?* 2<sup>d</sup>. *Whether the court would relieve?* "As to the first," said Lord Keeper Henley, "*I am clear of opinion, that it is a shift within the statute:*" the plaintiff having paid more than five per cent. upon the sums actually advanced viz. 924l. instead of 1000l.



1000l. and 1132l. 5s. in lieu of 1400l. Yet it is evident in the first transaction, that if Mr. Moore had repaid the money within the time at four per cent. no usurious Interest would have been received: and in the 2d, had he replaced the stock, he might in fact have avoided paying any Interest at all by purchasing in at a lower rate, than the defendant had sold out. And, as Lord Kenyon observed in *Tate v. Williams*, “a mere loan of stock is not usurious, nor the payment of the dividends in the meantime, though they exceed the legal rate of Interest. In this case the loan was not originally *usurious* during the first year, *because the party borrowing it had it in his power to repay the money or replace the stock itself if he had chosen.*”

The case varies, where the Principal is really put in hazard. And here the distinction holds which was taken by Dodderidge in *Roberts v. Tremayne*; which, as it was observed by Chamber counsel in the late case of *Morse v. Wilson*, has always been considered as *the rule, upon which questions of this sort must be decided.* “If I lend 100l. to have 120l. at the year’s end upon a casualty: if the casualty goes to the Interest only and not to the Principal, it is Usury: for the party is to have the Principal

When Principal and Interest both in hazard it is not Usury.

<sup>1</sup> 4 Term. Rep. 353.

“again,

PART I.  
CHAP. V.

Sharpley v.  
Hurrel.

Bottomry  
bonds not  
usurious.

“again, come what will: but if the Principal  
“and Interest are both in hazard, it is not then  
“Usury.” Such was the case of *Sharpley v. Hurrel*<sup>1</sup> where a man advanced money to victual a Newfoundland ship on condition of receiving so many fish, far exceeding the legal rate of Interest with the Principal in case the ship returned to Dartmouth, and the Principal only in case she arrived elsewhere, but nothing in case she did not arrive at all. The court held it *not* to be Usury: for the lender ran a hazard of having less than the Interest in one case, and of losing both Principal and Interest in the other.

All cases of bottomry are grounded upon the reality of the hazard, and therefore are not within the statutes of Usury, and the excessive Interest, that is allowed to be taken upon such contracts is not permitted in favour of trade, but for the reason already mentioned, and because there are not words in the statutes to reach *bottomry* bonds. This doctrine was most expressly recognized in the famous case of *Chesterfield v. Jansen*<sup>2</sup>, where Lord Hardwicke was assisted by

<sup>1</sup> Cro. Jac. 203.

<sup>2</sup> 2 Vez. 125. 1 Atk. 301. and 1 Wilson. 286. In this case J. Burnett said, “That, the true reason, why the  
“court holds bottomry bonds good, is because they are  
“not against the statute, as by a hazard he runs, he may be  
“entitled

by Judge Burnet, Sir James Strange, Lord Chief Justice Lea, and Lord Chief Justice Willes. This case

PART I.  
CHAP. V.

"entitled neither to Principal nor Interest:" and Lord Chief Justice Lea said, "Bottomry bonds are held good, not because they are for the benefit of trade, but because the whole is at hazard." Mr. Erskine notwithstanding has very ingeniously accounted for the excessive Interest upon these bonds being allowable upon the grounds of trade. "On this principle alone the law allows policies of insurance, bonds on *respondentia* and on ships and their cargoes. Exceptions to the general rate of Interest founded on the truest spirit of commerce and therefore vacated on the shadow of injustice or oppression, their end not being to permit artful enterprizing men to grow rich at the expence of fools; or the profligate to riot in misfortune, but to share the burden of human losses among a number, which in great concerns would depress and ruin individuals, to bid defiance to the elements, the waves and every accident of life, and by a prudent communication of a share of prosperity, to avoid the possibility of poverty. For if the cargo is lost, there is no mother to weep over a starving family: because the owner has paid his insurance: and receives the profit of the commodity, which lies at the bottom of the ocean, and the insurer to indemnify his disbursements has received the premium of a thousand others, that are returned safe into port. This is the genuine spirit of trade, where industry and honesty spread their blessings around, and no man rises on the ruin of another, where misfortune's shafts are spent in air, or fall unfelt on the shields of the commercial phalanx."

*Refl. p. 21. 22.*

It is not the mere nature of bottomry bonds, that keeps them out of the statute. For it was said in *Chesterfield v. Jan- sen* (1 Atk. 342.) "Suppose a contract was made for a ship's



PART I.  
CHAP. V.

Loans on  
contingen-  
cies and ha-  
zardous bar-  
gains.  
Chesterfield  
v. Janfen.

case is a general *repertorium* of all the determinations before that time (1750) upon the nature of loans on contingencies and hazardous bargains. It arose out of a loan of 5000l. by Sir Abraham Janfen to Mr. Spencer on a *post obit* bond to pay Sir Abraham 10,000l. in case he (Mr. Spencer) should survive the Dukes of Marlborough. He did survive the Dukes and gave a new bond to Sir Abraham for 10,000l. and before he died paid off 2000l. part of it. He bequeathed the residue of his personalty to his son; the bill was filed by the executors and

“ ship’s return to Newcastle from London or to Dover from  
“ Calais, at a season of the year, when there is little or no dan-  
“ ger, would not the court look on this as colourable and a  
“ mere evasion of the statute? And in the case of *Joy v.*  
“ *Kent* in Hardr. Reports (418.) it appears very plainly from  
“ what the court said there, that even a bottomry bond may  
“ be an evasion of the statute, as well as any other contract,  
“ or Lord Chief Justice Hale would never have sent it to  
“ trial.”

It appears from other cases, that the reason, why bottomry bonds are not within the statute, is intrinsic in their own nature and hazardous quality; and not arising out of any reference or consequence to trade. As in *Long v. Wharton* (3 Keb. 304) “ Error of judgment in debt on obligation to pay 100l. on marriage of the daughter, and if either plaintiff or defendant die before, nothing. The defendant pleads the statute of Usury, and that this was for the loan of 30l. before delivered: to which the plaintiff demurred: and *per curiam* “ *this is plain bottomree.* And judgment affirmed *nisi.*”

guardians

guardians to be relieved against this, as an usurious and unconscionable bargain. The bill however was dismissed without costs. Every one of the Judges having delivered a studied and elaborate opinion, that the contract *was not usurious*, and that the case was clear of all fraud<sup>1</sup>.

PART I.  
CHAP. V.

The ruling distinction in such bargains or contracts is this: Wherever the contract upon a loan of money is upon a contingency, *that is colourable or so slight*, as is contrived merely to evade the statute, the statute shall have its effect. The agreement must be *corrupt*, or it will not be *usurious*. Provided then, that there have been no previous agreement for the loan of money, all such contingent or casual bargains and hazardous contracts or wagers will not fall within the statutes of Usury. Thus in the case of *Bedingfield v. Ashby*<sup>2</sup>, the chance of five daughters being alive at the distance of 10 years was admitted to keep the agreement to pay 80l. a-piece

Every colourable contingency is usurious.

<sup>1</sup> Lord Hardwicke on this occasion took particular pains to express his disapprobation and abhorrence of bargains of this nature (3 Atk. 353.) "*Post obit* bargains and *junctim* annuities have got their brokers and factors about this town, and I would willingly shut the door against such persons and am not ashamed to own, I shall always be ready, consistent with the rules of equity to correct such enormities."

<sup>2</sup> Cro. El. 741.

PART I.  
CHAP. V.

Slight hazards take not a case out of the statute.

Roberts v. Tremayne.

Mason v. Abdy.

to each of them under that contingency in consideration of 100l. paid down from being usurious; but the court added: if "it had been, that he should pay at the end of one or two years 300l. if any of the said children were alive, that had been Usury; for in probability, one of them would continue alive for so short a time: but in ten years are many alterations."

The courts on the other hand have been particularly guarded in admitting any species of contingency wager or hazard to take a case out of the statutes. Thus in *Roberts v. Tremayne* a lease was made for 60 years for securing the repayment of 150l. lent, on paying to the lender 22l. 1cs. per annum if she should so long live: but if the 150l. were repaid within two years, the lease should be void. Yet was it holden to be usurious, *for by intendment* "the lender might live above two years and it is an apparent possibility, that she should receive that consideration, whereby she is within the statute." And also because this lease was granted for the "security of money lent upon Interest and for the securing of that, which the statute intends she should lose." In the case of *Mason v. Abdy* <sup>2</sup> Lord Chief Justice Holt said, *that a*

<sup>1</sup> Cro. Jac. 507. <sup>2</sup> Rol. Rep. 47.

<sup>2</sup> Comb. 125. Carth. 67. Show. 8. <sup>3</sup> Salk. 390.

dying



dying in six months was no hazard and therefore usurious; which imports that a fair hazard will keep the case out of the statute; although a slight colourable contingency will not. As to this point Lord Mansfield expressly said, in *Richards v. Brown*<sup>1</sup>, that, whether a contingency of three months be sufficient to take it out of the statute, all the cases have been looked into, and from them it appears, that "the contingency is so slight, as to be merely an evasion and is deemed colourable only and consequently not sufficient to take it out of the statute<sup>2</sup>."

PART I.  
CHAP. V.

*Richards v.  
Brown.*

In all the cases upon Usury it appears to have been an invariable rule, that if the *Interest only* be hazarded in a contract, and the Principal be secured, the whole is usurious<sup>3</sup>. But whatever shift or contrivance is used to ensure more than the rate of five per cent per annum for the forbearance of the payment of money, it will fall within the statute. It will then be a disquisition of infinite importance to the monied part of this nation, to examine the nature of some of the more ordinary transactions at the Stock Exchange, by which immense sums of money are paid and received for a certain species of monied accommodation or forbearance. I will not call

If the Interest only be hazarded and not the Principal it is Usury.

<sup>1</sup> Cowp. 777.

<sup>2</sup> Moore 397. Comb. 25. 1 Show. 8. 1 Atk. 341.

<sup>3</sup> Hawk. P. C. L. 1. C. 82. Sect. 29. 7 Ed. by Leach:

PART I.  
CHAP. V.

Acceptation  
of the term  
loan.

Definition  
of modern  
Usury.

the transactions usurious, because I believe the specific case has never been determined. I shall briefly endeavour to ascertain, how far these cases fall within the spirit analogy and reason of former determinations; premising however, that *the loan*, which the courts have so frequently said to be one of the three things, that must concur to constitute Usury, is not to be taken in the strict acceptance of the word: for as I may become indebted or bounden to pay money at a certain time to another man otherwise, than by having borrowed the money of him, so I take it to be clear, that my creditor, though he did not LEND me the money, may become guilty of Usury by taking from me more than the rate of five per cent per annum for forbearance of the money I owe him. Hence a very simple and strict definition of modern Usury may be framed. *The contract for or acceptance of a reward of above five per cent per annum for the forbearance of money due to the person, who contracted for or accepted such reward.* In such contract or acceptance we find the *genus proximum* of other money negotiations; in such forbearance the *differentia ultima*, by which Usury specifically differs from annuities wagers and all other hazardous and contingent bargains, in which the principal is not due to the person, who so contracted for or received the premium.

I am

PART I.  
CHAP. V.Whether  
Usury may  
be without a  
loan?

I am fully sensible how explicitly it is laid down in most of the cases, that to constitute Usury, there must be a *loan*. And I find that Viner<sup>1</sup> in quoting 2 And. 15. pl. 8. S. C. says, "By the proviso it appears that the intent was, "if one was indebted to another truly *without loan or intention of Usury*, then in such case *bonds and conveyances of land for securing the true debt are out of the said statute* : but if there is a borrowing of money and a communication for Interest the device to have beyond the rate of ten per cent. is fraudulent and within the said statute, otherwise the statute would be vain." In Loveday's case,<sup>2</sup> which was an information in the Exchequer upon the statute of Usury, the Jury gave an imperfect verdict, because they found an acceptance, but *no loan* : and thereupon the court awarded a *venire facias de novo*, as Lord C. J. De Grey said in *Murray v. Hardinge*. It is essential to the nature of an *usurious contract*, that there must be 1<sup>o</sup>. a *loan*, 2<sup>o</sup>. that *illegal Interest is to be paid for such loan*. Suppose then, that I owe 100l. not lent, which my creditor demands : I pray time for payment, and he gives it for six months upon my agreeing to pay 6l. for the forbearance. Will not such a contract be usurious ? And will it not convert the debt

<sup>1</sup> 22 Vol. 300.<sup>2</sup> 8 Rep. 65.



PART I.  
CHAP. V.

into a loan for all the purposes of the statute? Such was the case of *Pollard v. Scholy*<sup>1</sup>. “Pollard sold to the defendant some oxen to be paid for at a given time: when the time was arrived, Scholy required a longer day for payment, and Pollard granted it, paying to him so much wheat, as exceeded in value the legal rate of Interest. The defendant in debt pleaded the statute, and would avoid the contract, and the opinion of the Justice was, that the statute doth not make the contract void, which was duly made, but doth only avoid all contracts for Usury: and this last contract is void being against the statute, but the first was good being made *bonâ fide*.” Now from the first to the last of this transaction there was no loan in the ordinary acceptation of the term; unless it be admitted, that this agreement for forbearance converted the debt into a loan in the meaning of the statute. What Lord Commissioner Eyre said in *Spurrier v. Mayes*<sup>2</sup> most pointedly confirms this idea. “Usury is taking more than the law allows upon a loan, or as I read it, *for forbearance of a debt*.”

Tendency of  
the Acts  
against  
Usury.

The acts against Usury were framed for the purpose of defending and protecting the distressed borrower against the hard, and oppressive terms

<sup>1</sup> Cro. El. 20.

<sup>2</sup> 1 Vez. Chan. Rep. 531.

of the merciless lender. In proportion then as pecuniary intercourse gives rise or opportunity to one set of men to grind harass or impoverish another, so ought the provisions of the act to be attended to and enforced. In the present melancholy and unprecedented scarcity of cash and stagnation of credit, the distresses of many holders and dealers in stock have placed them in the situation of being tempted or forced to pay at the rate of 30 or 40l. per cent. *continuation money* from one rescounter to another. I am fully aware of the extent of the mischiefs and evils, which spring out of the pernicious system of *stock-jobbing*: and I readily conceive, that in the opinion of many, the losses to which these jobbers are exposed cannot be too severe, in order to deter them from such practices. There is no question, but that Sir John Barnard's act against *stock-jobbing*<sup>1</sup> has produced much good, and if regularly enforced would be constantly attended with the happiest consequences. But although the evils, which by that act were intended to be remedied are great and multifarious, and premiums for continuation are most frequently given upon cases within the act: yet as some just equitable and legal contracts for the purchase of stock for time are entered into, a *continuation premium* may as well be given to keep off the actual

Continua-  
tion premi-  
ums.

<sup>1</sup> 7 Geo. II. c. viii.

PART I.  
CHAP. V.

purchase or payment for stock, as to drive off the settlement of *illegal* differences. Now in order to determine, how far the taking of such premiums for *continuation* is or is not usurious, we must first consider the relative situation of the parties, between whom the negotiation is carried on.

Whether  
usurious?

The transaction is either negotiated between parties, who really mean to buy and sell the stock they agree to deliver and accept at the future day, or between those, who mean merely to gamble in direct violation of the act against it. Now as it rarely happens, that these premiums for *continuation*, (or for *backadation* which would be the same thing as to the principle) pass between persons of the first description, I shall only consider the effects of these bargains between the latter<sup>1</sup>. A upon mere speculation has ordered B his broker to purchase 20,000l. three per cents at 62 for the next rescounters. In the course of

<sup>1</sup> The ingenuous and ingenious Mr. Mortimer gives the following account of these terms. "*Continuation* is a premium given, when the price of a fund, in which you have a jobbing account open is higher for time than for ready money: and your settling day is arrived: so that you must take the stock at a disadvantage: in this case you give from one to three per cent. to put off the settlement and continue the account open for a month or three months. *Backadation* means a consideration given to keep back the delivery of stock, when the price is lower for time than for ready money." *Every Man his own Broker*, 11th edit. p. 74.



two months they have fallen from 62 to 59, and appear likely to fall still lower. A still hoping, that in the space of four months some fortunate turn of events may give them a rise, agrees to give to B  $3\frac{1}{2}$  per cent. premium to continue the account open for three months longer. At this period how stand the parties with reference to each other? They are both *in pari delicto* engaged in an illegal contract against the statute to prevent the infamous practice of stock-jobbing. Both A and B are liable to *qui tam* actions for the penalties given by the act: and the contract is in itself void. Yet notwithstanding the nullity of the contract and the illegality of the whole transaction, there arises a species of debt and credit between the parties, of which, though the law will not enforce the payment, yet it makes it productive of certain effects and consequences, as much as if the debt were legal. Wherefore I humbly conceive, that if A acknowledging himself to be indebted to B in 1000l. for the differences in his *stock-jobbing* account, although the debt be *illegal*, yet if B agree to take ten per cent, and do actually take that consideration for forbearance of that sum for six months, B will be equally guilty of Usury, as if the money had been *legally* owing, so that the illegality of the debt would, I presume, rather aggravate the corrupt quality of the contract, than clear the trans-

PART I.  
CHAP. V.

action of those peculiar circumstances, to which the statutes of Usury apply their penal effects. In fact the remedies given by those very acts are upon *illegal* debts and *void* contracts. And it is said (10 Mod. 66.) “*A non est factum* cannot “be pleaded upon the statute of Usury:” for although the bond be invalid, yet it has the appearance of a bond, and it is void only as to its efficacy.

I will then consider A on the first settling day as indebted to B in 600l. for the difference, (supposing the fall to be three per cent on 20,000l.) and 25l. for brokerage. He takes 3l. 10s. per cent<sup>1</sup> premium for keeping open the account for three months longer, or in other words for the forbearance or giving time to A to settle his account and make up his differences. The question then will arise: Does not B contract for and take above five per cent per annum for the forbearance of money? But it will be said: here is no loan: unless the contract for continuation and the premium paid upon it convert the amount of the differences and brokerage into a loan. The difference may at the ensuing rescouters be entirely done away: and by the

<sup>1</sup> Supposing the stock at 60, 20,000l. three per cents will be equal to 12,000l. principal money, then the premium of three per cent on the stock for three months would be equal to Interest at twenty-four per cent per annum.

turn of the stocks B may become debtor to A. The reverse may also happen; and A may double his debt to B by a further fall of the stock. B however has more than the whole amount of his first differences and brokerage in hand by the premium of  $3\frac{1}{2}$  per cent. His first debt therefore cannot be said to be put in hazard. But if this premium can be proved to be merely the consideration for keeping open the chances of the market with reference to a future transfer, it will be most emphatically a hazard, and therefore the payment for it will not be usurious within the statute.

There is scarcely a maxim upon Usury, which the courts have more tenaciously supported, than that *it is the intent that makes the Usury*. Where therefore there was no corrupt agreement between the parties, and the scrivener had in the bond by mistake made 5l. payable for 100l. at the end of six months instead of twelve months, it was said in *Ballard v. Oddie*<sup>1</sup> that it is not Usury. And it was there added, that “if a mortgage be for 100l. with a proviso to be void on payment of 106l. at the end of one

The intent  
makes the  
Usury.

<sup>1</sup> 2 Mod. 307. 1 Sand. 295. Mod. Rep. 69. Hawk. P. C. 2. V. 7. Ed. 379. Hard. 418. 1 Freem. 253. Anon. 264. Booth v. Cooke. 2 Vent. 107. Bucler v. Miller. Do. 83. Bush v. Buckingham. 3 Cro. 504. *Nevison v. Whilley*. 2 Cro. 677. *Bulkley v. Guildbank*. Do. 646. Prescott's Case.

“ year,



PART I.  
CHAP. V.

“ year, and no covenant for the mortgager to  
“ take the profits till default be made in pay-  
“ ment, so that in strictness the mortgagee is en-  
“ titled both to the Interest and Profits, yet if  
“ this was not expressed the agreement is not  
“ Usury.” So in *Murray v. Hardinge*<sup>1</sup> which  
turned upon the point of an annuity being  
usurious, (and which I shall notice more fully  
hereafter) the transaction was holden not to be  
usurious, although the scrivener in drawing the  
deed had recited, that it was a *loan of money*, con-  
trary to the fact.

Le Grange  
v. Hamil-  
ton.

In a late case, *Le Grange v. Hamilton*<sup>2</sup> the ef-  
fect of the intention of the parties was very ac-  
curately considered. The case turned upon the  
construction of a special memorandum indorsed  
upon a bond given for payment of 100l. with  
Interest at five per cent. in payments of 20l.  
yearly by quarterly payments of 5l. each. The  
indorsement was to this effect: that at the end  
of each year, *the year's Interest due* was to be  
added to the principal sum: and then the 20l.  
received during the year to be deducted, and the  
balance to continue as principal. Lord Chief  
Justice Kenyon interpreted the words of the me-  
morandum, *the year's Interest due* to mean upon  
the whole sum of 100l.: which admitting the

<sup>1</sup> 3 Will. 390. <sup>2</sup> Bl. Rep. 859.

<sup>2</sup> 4 Term. Rep. 613.

quarterly payments to have been made in the course of the year, would have been usurious. But the other three Judges laid it down as the basis of their determination, that if the words could bear a legal construction, it ought to be given to them in favour of the intention of the parties, which did not appear to be usurious: and it was accordingly so adjudged. For in fact, that which *was due* at the end of the year, was Interest upon the residue of the 100l. after the successive deductions of the quarterly payments: for *no Interest* could accrue due upon any part of the Principal, that had been paid off.

Before the passing of the 14th of his present Majesty in *Stapleton v. Conway*<sup>1</sup> Lord Hardwicke said, "That upon a contract made in England  
" for a mortgage of a plantation in the West In-  
" dies, no more than legal Interest shall be paid  
" upon such mortgage; and if in such case there  
" is a covenant in the mortgage for payment of  
" eight per cent. Interest, it would be within  
" the statute of Usury, notwithstanding this is  
" the rate of Interest, where the land lies." The Legislature thought proper, as we have seen to alter the law: and that in a very singular manner. It gave to all existing mortgages and securities the same efficacy, as if they had been executed on the spot: but upon future mortgages

Of West In-  
dian securi-  
ties.

<sup>1</sup> 3 Atk. 727. and more fully 1 Ves. 427.

and

PART I.  
CHAP. V.

and incumbrances on Irish and West Indian estates it allowed only of an additional one per cent. It is also to be remarked, that the doctrine of Lord Hardwicke still holds good, as to any loans mortgages or other securities executed in England upon any other parts of the British dominions, except Ireland and the West Indies <sup>1</sup>.

Scott v.  
Nesbitt.

In *Scott and Nesbitt* <sup>2</sup> the dowager Lady Macclesfield had lent several thousand pounds on a bond to Nesbitt at eight per cent. and the money was also secured by mortgage of plantations in Barbadoes and Tobago at six per cent. This was in 1772, two years before the passing of the 14th of his present Majesty: and the bond was admitted to be clearly usurious. It is to be remarked, that the act speaks only of *bonds* covenants and securities for the same sums as are secured by mortgage: and in arguing this case, it was insisted, that this bond at eight per cent. was a different debt from the mortgage at six per cent, and that it varied also as to the equity of redemption. A difference was also made between the transfer of a mortgage on such plantations and a derivative mortgage, which becomes a new transaction. The first is clearly within the words

Difference  
between a  
derivative  
and original  
mortgage.

<sup>1</sup> I should rather presume, that this Act does not extend its effects to any West Indian islands, which were not in possession of Great Britain at the time of passing the Act: as St. Domingo Martinico Guadaloupe, &c.

<sup>2</sup> 2 Bro. 641.

and



and purview of the act, and tends to the advantage of the mortgagor by keeping off the payment of the money borrowed for the improvement of the estate: the second affects not the original mortgagor, but is only for the benefit of the mortgagee, and falls not within the reason principles or words of the act.

In *Dewar and Span*: it was determined, that where a bond was given in England at six per cent for securing part of the purchase money of a plantation in the West Indies it was usurious; *for that the act does not extend to personal contracts*. And Lord Kenyon added, "If the present attempt were to succeed, it would sap the foundations of the statutes of Usury."

*Dewar v.  
Span.*

Having before hazarded a definition of modern Usury (p. 194) into which the necessity of a *loan* enters not, and having endeavoured to support by authority the possibility of committing Usury without a loan of money, in the ordinary acceptance of the word *loan*, I beg leave to arrest the attention of my reader to the conduct of the court in this case upon that very point. It was urged by the Counsel against the bond's being usurious: "Neither can this be called Usury within the general statutes of Usury, for they relate only to loans of money: but here was no loan at all." And they quoted *Yeoman v.*

*Usury without a loan.*

\* 3 Term. Rep. 425.

PART I.  
CHAP. V.

*Barflow*<sup>1</sup> where the plaintiff being possessed of hammered money to the amount of 300l. made it over to the defendant on his promise to pay 300l. with 4l. 10s. of Interest for each 100l. for forbearance to the end of eight months. After *non assumpsit* pleaded and verdict found for the plaintiff, judgment was entered up after several arguments by counsel and two terms deliberation by the court. On which occasion Powell J. said that as the consideration of the promise was, *quod quarens solveret prædicto defendenti* 300l. there was no *loan*, without which there can be no Usury. But Lord Kenyon, the three other Judges concurring took no notice of the objection, although there were no loan in the principal case: but discharged the rule for setting aside the nonsuit entered against the plaintiff on the ground of Usury. So also in Vezey's report of *Stapleton v. Conway*, which turned upon the rate of Interest, which 2000l. charged by settlement on an estate in Nevis should bear, the counsel urged, that this being a sum of money to be raised out of an estate, it must be considered as coming out of a fund in that island, and to bear the rate of Interest there, viz. 10l. per cent, for so much is money worth there: and this not being a debt or loan, stood clear of any objection upon the statute of Usury. But as Lord

<sup>1</sup> 1 Lut. 271.

Hardwicke in this case directed only five per cent. Interest upon this sum of money and expressly said, that every contract made in England for money secured abroad at more than five per cent. was usurious; it must be allowed, that he would have considered the taking of more than five per cent. upon this charge as usurious: and yet in the ordinary acceptation of the terms, it was neither a *debt* nor a *loan*.

PART I.  
CHAP. V.

It is to be remarked upon this statute, that the first thing, which it enacts is, that all mortgages and securities for monies upon land in Ireland and the West Indies then executed in Great Britain, and all bonds covenants and securities for payment of the same sums of money, should be as good valid and effectual to all intents and purposes, as if they had been executed in the country, where the mortgaged lands lay. We must then consider of what validity and effect the mortgage and bond would have been in this country, in case they had been really executed in Ireland or the Plantations. It will be useless to consider the effect of the mortgage deed, in as much as it gives remedy on the mortgaged land: for that cannot be enforced, where the land lies not, as is evident. But if the mortgage deed contain a covenant for the payment of the money, as most mortgages do; then the question arises, Will the covenant and bond for  
the

Effect of the  
14th G. III.



PART I.  
CHAP. V.

the Principal and Interest at the rate of the country, in which they were entered into, follow and render the person of the covenantor and obligor liable to be sued and arrested under a judgment in our courts for the Principal and Interest exceeding five per cent? We must not lose sight of the limited operation of this act, which extends not to personal contracts generally, as was determined in *Dewar v. Span*, but only to such bonds and securities, as are given for the payment of money secured also by mortgage. Now a bond given by a mortgagor for the payment of 1000l. which he has also secured upon his land, is a *personal contract*: and an additional remedy given to a mortgagee for enforcing the payment of his mortgage money. Under the 14th of his present Majesty such personal contracts entered into here, as are coupled with mortgages for the same sum in Ireland or the Plantations will operate exactly in this country, as if the personal contract had been entered into in the country, where the excessive Interest was legal. And then the case will be clearly decided in *Bodily and Bellamy*<sup>1</sup>, where an action was brought here in B. R. upon a bond entered into at Calcutta, where both parties then resided and the plaintiff still resided; but the defendant

Effects of  
personal  
contracts entered into  
in foreign  
countries.

<sup>1</sup> 2 Bur. 1094.

was in England: and nine per cent. was the rate of Interest made payable by the condition of the bond. Lord Mansfield said, "The plaintiff is *in justice* entitled to recover the sum *really lent* to the defendant, together with Indian Interest till the signing of the judgment: but with only legal Interest of this country (which is no more than five per cent.) from the time of the liquidation of the debt by the judgment." Whence it is clear, that a bond given in a foreign country for money at the legal rate of Interest of the country, where it was executed may be put in suit in this country as fully for the Principal and such Interest, as if it had been executed in London for money at five per cent. This is founded upon general principles of law and equity. For the original contract in this case was entered into by parties able and willing to contract, the one binding himself to the other to perform that, which the *lex loci* permitted. The condition, which the Roman law required for completing a good and valid contract here occurs, which is the assent of the party to be under an obligation of carrying into effect that, to which he assented. <sup>1</sup> *Animus utriusque consentit perducere ad effectum id, quod inchoatur.* That, which is here

<sup>1</sup> Powel on Contracts, 1 vol. viii.

PART I.  
CHAP. V.

assented to be performed is the payment of Indian Interest (nine per cent.) upon the money due: and it shall be done accordingly. “<sup>1</sup> Cum  
“ *judicio bonæ fidei disceptatur, arbitrio judicis*  
“ *Usurarum modus ex more regionis, ubi contractum*  
“ *est, constituitur.*”

2d. We are next to consider, *What remedies and redress the courts have applied to the injured parties.*

Who are the  
injured parties in  
Usury.

Lord Mansfield in *Browning v. Morris*<sup>2</sup> has been very explicit in describing the injured parties in matters of Usury. “Where contracts  
“ or transactions are prohibited by positive statutes, for the sake of protecting one set of  
“ men against another set of men, the one from  
“ their situation and condition being liable to be  
“ imposed upon by the other; there the parties  
“ are not *in pari delicto*: and in furtherance of  
“ these statutes the person injured, after the  
“ transaction is finished and completed may  
“ bring his action and defeat the contract. For  
“ instance by the statute of Usury, taking more  
“ than 5 per cent. is declared illegal and the  
“ contract void: but these statutes were made  
“ to protect needy and necessitous persons from  
“ the oppression of Usurers and monied men,

<sup>1</sup> Digestor. l. 22. tit. 1.

<sup>2</sup> Cowp. 790.

“ who



“ who are eager to take advantage of the distress of others : whilst they on the other hand  
 “ from the pressure of their distress are ready  
 “ to come into any terms, and with their eyes  
 “ open, not only break the law, but complete  
 “ their ruin. Therefore the *party injured* may  
 “ bring an action for the excess of Interest.”

I shall not here go again into the question, whether the common law concerning Usury be or be not abolished by the act of Henry VIII. If, as I contend it be still subsisting, then the injured party certainly retains all the remedies and redress, which the common law ever gave. Now there cannot be stronger evidence of what the common law once was, than the answer of the King to the petitions of the commons (6 Ric. II.)

Usury at  
common  
law.

“ Touching Usurie the King willeth, that the  
 “ laws of the church should discuss the same.  
 “ But if any man be grieved by Usurie upon  
 “ accompt trespass extortion oppression falsehood  
 “ deceit or such like means the *laws and customs*  
 “ *of the realm* shall punish the same.” So was it  
 said in the case of *Saunderson v. Warner* \* that  
 Usury was “ of mixed conuzance and may be  
 “ enquired of in the ecclesiastical court, *car la*  
 “ *est brief de consultation* for such as are sued for  
 “ Usury in court christian : and so that appear-

\* 2 Rol. 240.

PART I.  
CHAP. V.

Usurer pun-  
ished at  
common  
law.

King v.  
Walker.

Usurious  
contract  
avoids the  
security.

“eth in the patent of Edward I: and so in  
“An in the time of Edward II, they en-  
“quired of Usurers *Christiani Judaizantes*, and  
“some were indicted and pardoned, but not  
“freely; but with a *dum tamen*, that they should  
“not do so any more. Hil. 16. Edw. III. Rot. 28.  
“John Hecker in the Counter for Usury, and  
“removed by a *certiorari* into the King’s Bench  
“and committed, and so there are many others  
“about the same time.” Before I come to the  
remedies given by the statutes, I beg leave once  
more to remind my reader of the case of the  
*King v. Walker* <sup>1</sup> (19 Car. II.) to prove that the  
common law concerning Usury survived the  
passing of the 37th of Hen. VIII; where upon  
proving *the taking* of excessive Interest though  
without any previous corrupt agreement, the  
court passed judgment upon Walker at *common*  
*law*, viz. fine and imprisonment.

Well did Lord Mansfield say in *Lowe v. Wal-*  
*ler*, that the statute of Usury was made to protect  
*men, who act with their eyes open, to protect them*  
*against themselves.* The first sort of protection,  
which it affords to the injured party is, that it  
avoids every deed bond or security, which he  
may have entered into, so that they cannot be  
enforced against him. This seems to be an af-

<sup>1</sup> Sid. 421.

firmance of the rule at common law, that *no action will lie upon an usurious contract*. The corruption of the contract infects or taints the security, which is given under it. The courts however appear to have varied in their determinations upon the effects of the securities given under usurious contracts. In *Ellis v. Warnes* an <sup>1</sup> usurious bond for 100l. was given by Warnes to one Alder, who afterwards became indebted to Ellis. Then Warnes and Alder assigned this bond to Ellis, who was not privy to the usurious contract; and it was judged by Gawdy Yelverton and Williams, (*sur grand deliberation* says Moore) that the bond entered into between Alder and Warnes was not void in the hands of Ellis, because it was *pro vero debito* and he was not privy to the Usury, notwithstanding it were made upon an usurious contract between *Alder and Warnes*. But says Croke, "Fenner doubted thereof, because it being grounded upon corruption is altogether ill. And every one is to take heed of his assurance at his peril." Popham was absent; whereby the other three adjudged it for the plaintiff. The principle, upon which this case was determined appears to have been abandoned in later determinations.

*Ellis v.  
Warnes.*

<sup>1</sup> 2 Cr. 32. Moore 752.



PART I.  
CHAP. V.

Void securities cannot  
after become good.

In *Lowe v. Waller* a note given upon an usurious contract was negotiated for a valuable consideration and without notice of the Usury; and the court held it void in the hands of the indorsee. For said Lord Mansfield “the words of the act are too strong. Besides we cannot get over the case on the statute against gaming, which stands on the same ground.” This was the case of *Bowyer v. Bampton*<sup>1</sup> upon the construction of the 9th of Ann. c. 14, where a promissory note given for money knowingly lent to game with was adjudged void in the hands of an indorsee for valuable consideration and without notice. And the court held, that it would be making the note of some use to the lender, if he could pay his own debts with it. On the like principle had been determined the case of *Goldsmith v. Bunning*<sup>2</sup> though it were not cited in *Lowe v. Waller*, where a note given to a maid-servant for procuring a match was holden void in the hands of the man, who married the maid-servant upon account of the money he thought her entitled to by the note, although ignorant of the consideration, for which the note had been given.

For the more effectually preventing the prac-

<sup>1</sup> 2 Str. 1155.

<sup>2</sup> 10 Mod. 448.

PART I.  
CHAP. V.

Remedies multiplied with the extension of the evil.

In Usury the crime and penalty fall on one party only, and the other has his remedy.

Contra Tomkyns v. Barnet.

Now over-ruled.

tice of Usury upon necessitous and distressed borrowers, the courts have continued to increase multiply and extend their remedies in proportion, as the ingenuity of monied men devised new means of evading the statutes in their bargains with the distressed and needy. Thus in the year 1693 in *Tomkyns v. Barnet* <sup>1</sup> Chief Justice Treby would not suffer an obligor to recover back money paid upon an usurious bond, alledging, "That where one knowingly pays money upon an illegal consideration, the party that receives it ought to be punished for his offence: and the party, that pays it, is *particeps criminis*, and there is no reason, that he should have the money again; for he parted with it freely, and *volenti non fit injuria*." When a similar case came before Lord Talbot in *Bosanquet and Dashwood* <sup>2</sup> his Lordship seemed to doubt whether the case of *Tomkyns v. Barnet* were law; and he observed that the maxim *volenti non fit injuria*, holds in all cases of hard bargains: and that the party oppressed in Usury is not properly *particeps criminis*, for his necessities oblige him to submit to those terms. The courts have now entirely over-ruled the case of *Tomkyns v. Barnet* according to what Lord Mansfield said in *Browning and Morris*, that the

<sup>1</sup> 1 Salk. 22.

<sup>2</sup> For. 38. and Cas. in Chan. 38.

PART I.  
CHAP. V.

The rule  
*de paritate  
delicti.*

Borrower  
having re-  
paid the  
money may  
give proof of  
the con-  
tract.

Competen-  
cy and cre-  
dibility of  
witnesses.

party injured might bring his action for the excess of Interest. The rule seems to be now settled, that where the crime and penalty fall upon one party only, (as in Usury upon the lender, in Insurances upon the insurer,) there the other has his action. <sup>1</sup> But in bribery stock-jobbing gaming &c. where both parties are *equally criminal* it is otherwise: and in these latter cases, the rule holds *in pari delicto potior est conditio defendentis*.

It has also been now decided, that a borrower under an usurious contract, when he shall have repaid the money, is a good witness to prove such repayment as well as the usurious contract itself: for if he had not repaid the money he might avoid his own act and deed. And yet the borrower may be a witness <sup>2</sup>, though he should not have repaid the money, provided the Usury neither affect the debt, nor avoid the contract. The determination, which settled these points was in *Abrahams qui tam v. Bunn* <sup>3</sup> in which Lord Mansfield entered with great learning and precision into all the cases, which before affected the subject, and he frankly owns,

<sup>1</sup> *Jaques v. Golightly*. 2 Black. 1074.

<sup>2</sup> Hawk. Pl. l. 1. c. 82. Sect. 27. cites Hard. 331. Co. Lit. 6. b. 2 Rol. 685. 2 Raym. 191. b. 1. 2. c. 46. S. 1 Vent. 49. 1 Salk. 285. 2 Str. 1043.

<sup>3</sup> 4 Bur. 2256.

that



that the cases are contradictory and it is impossible to reconcile them. By this however it is now settled, that the true distinction between the competency and credibility of a witness, which had not been before sufficiently attended to, consisted in this: that where his *interest* is concerned, it shall go to his competency, where his *influence* only, it shall go to his *credit*: and where the matter is doubtful, the objection shall go to the *credit*. This was a very important decision in favour of the oppressed against the Usurer, for it broke in upon that secrecy of transaction, which heretofore prevented many usurious contracts from being brought into court, from the supposed inability to produce proper evidence of what passed only between the lender and borrower. The advantages, which the borrower acquires in these cases upon repayment of the money are founded upon a principle of equity. So in *Fitzroy v. Gwillim*<sup>1</sup> which was an action of trover for goods pawned under an usurious contract and afterwards burnt. Lord Mansfield said, "This is an equitable action brought by the plaintiff to be relieved from an usurious contract. She must therefore come with clean hands according to the principle laid down in the case of *Bosanquet and Dasbwood*, that

<sup>1</sup> 1 Term. Rep. 153. Vide also *Hodges v. Lovatt*, Loft. 51.

"those

PART I.  
CHAP. V.

Borrower's  
remedies af-  
ter repay-  
ment or ten-  
der of all  
monies lent.

“those who seek *equity must do equity.*” And as the plaintiff had not here repaid or tendered the money received, she was not entitled to the benefit of this equitable action.

We have already seen, that the party injured by the usurious contract may bring his action for the excess of Interest, and after he has repaid or tendered all the money borrowed, he is further capable of suing the Usurer for treble damages as well as a stranger. But every such action or information must be brought within twelve calendar (not lunar) months<sup>1</sup> from the time of the actual taking of the excessive Interest. For till then the usurious act, for which the statute gives treble forfeiture is not complete, as we have before seen in the cases of *Fisher v. Beazely* and *Lloyd v. Williams*. Although an information or *qui tam* action upon the statute must be brought within twelve months from the commission of the act of Usury, yet there is no limitation of time, by which the injured party is precluded from applying to the court to take advantage of the nullity of the deeds and securities under a corrupt contract.

<sup>1</sup> Noy. 37. as noted per Popham. 6 Months upon the Stat. of Usury shall be accounted half a year according to the almanack and not according to the 28 days in the month, which none gainsaid. Vid. also 1 Leon. 96. *Sir Woolaston Dixy's Case*.

It seems to have been an admitted rule, that "where the first contract is not usurious, it shall never be made so by matter *ex post facto* <sup>1</sup>." So on the other hand, if a bond under a corrupt agreement be made for more than legal Interest, yet although the excessive Interest be tendered, and not received it will not be Usury within the statute to make a treble forfeiture, but the obligation itself is void <sup>2</sup>: *Quod ab initio non valuit, tractu temporis non valebit*. It is almost impossible to retail all the advantages, that can accrue to the injured party by this avoidance of all the deeds and securities, which he may have entered into to his own tort. Nay even if a judgment be given upon an usurious contract, and it be a part of the agreement to have a judgment, the defendant may avoid such judgment by *audita querela*, or by *scire facias* brought on the same, as it was determined in the *Earl of Oxford's case* <sup>3</sup>. So may fines levied upon usurious contracts be avoided by averment, as in *Fermor's case* <sup>4</sup>.

I find in the case of the <sup>5</sup> *Queen v. Sewel* alias

<sup>1</sup> Bulf. 17. Hil. 7 Jac. Anon.

<sup>2</sup> 2 Le. 39. Arg. in *Van Henbeck's Case*. 4 Le. 43. Pl. 117. Trin. C. B. *Brown and Fulsbye's Case*. 3 Le. 205. Pl. 260. Trin. 30 El. in Sac. *Body v. Taffel*.

<sup>3</sup> Chan. Rep. 9. cites M. 3. Jac. *Harning v. Castor*.

<sup>4</sup> 3 Rep. 80.

<sup>5</sup> 2 Mod. 118.

PART I.  
CHAP. V.

Further remedies of the borrower in avoiding his own acts.



PART I.  
CHAP. V.

Indictment  
for Usury  
must be by  
common  
law.

*Beaus* as reported by Farresly, that the defendant was *indicted* for Usury, in taking 9l. for the use of 45l. for a year *contra formam statuti* : although, as before observed, the statute give not remedy by indictment. “ And the prosecutor, (who “ was the borrower) was produced as an evidence and sworn by Holt *de bene esse*, as he “ said.” And Holt on the occasion declared, that in a case of duress, (to which Usury is very like) a man shall be admitted to give evidence, though it be to set aside his own bond. “ And “ it being given to obtain his liberty, he shall be “ a witness also, where the nature of the thing “ allows him no other evidence. As if a woman “ give a note or bond to a man, to procure her “ the love of J. S. by some spell or charm, in “ an indictment for the cheat, though it tend to “ avoid the note, yet she shall be a witness. “ *Note.* Here it could not be given in evidence, “ that the defendant was a common Usurer, “ because he could not be ready to give an answer to that matter.” Whether this last *note* were made by Holt or by Farresly the reporter, it clearly proves against the opinion of Lord Coke, that the *common law* of Usury was not then understood to be abolished ; for by *common law* alone could a person be indicted as a *common Usurer*.

Liberal as the courts have been in giving redress

dress and remedies against Usurers, they are at the same time particularly precise in fixing and ascertaining the manner terms and conditions of enforcing them. Such is the admirable spirit of our criminal and penal code. For certainty is the only sure preventative against accumulative and constructive guilt.

In every information upon the statute for an usurious contract it is requisite to say, that it was *corruptly agreed, per corruptam accommodationem* &c. <sup>1</sup> otherwise the information will be insufficient: upon this general principle laid down by Coke, "Penal statutes are "to be pursued, (especially in informations) "strictly and *in terminis* according to the purview of the act." It is material to attend to what Croke Justice said upon this point in *Roberts v. Tremoile* <sup>2</sup> (meant I presume for Tremaine) "The third exception was, that it was "not found *quod corruptè agreeatum fuit* &c, but "only *quod agreeatum fuit. But non allocatur*, for "that it appears to the court judicially, that "the bargain was corrupt, and therefore needs "not to be found. Croke Justice drew the

PART I.  
CHAP. V.

Certainty  
necessary in  
criminal  
and penal  
laws.

Corrupt  
agreement  
must be laid  
in the infor-  
mation.

What to be  
found in an  
information  
and what in  
a verdict.

<sup>1</sup> 11 Rep. 58. Dr. Foster's Case. 1 And. 49. pl. 123. Doct. plac. 332. 333. Vin. tit. Usury, 306, cites *Emmott and Fulwood's Case*, &c. 1 Keb. 629. *Rex v. Gass* or *Garth*.

<sup>2</sup> 2 Rol. Rep. 48.

"dis-

## PART I.

## CHAP. V.

In every information the person the place the time and consideration to be specified.

“ distinction between an information and a verdict : for in an information it must be expressly alledged to be corrupt ; vide 11 Rep. Dr. Foster’s case, and he quoted the Book of Entries 333 : but it is otherwise in a verdict, which is the finding of the lay gents.”

In every information it is moreover necessary expressly to set forth the *persons*, with whom the usurious contract was made ; *cum quodam homine ignoto* was insufficient in *Martin Van Henbeck’s* case. And in *Nasie’s* case <sup>1</sup> where in an information upon the statute of Usury for a contract with persons unknown it was holden ill, that being only allowable in case of an indictment *pro morte hominis ignoti* : also, the *place* where and the *time* when the usurious contract or corrupt bargain was entered into : and further, *whose money it is*, and the *specific sum received* above the legal Interest. All which appear by the before mentioned cases of *Nasie* and *Van Henbeck*, and also by that of Sir Woolaston Dixy in the Exchequer<sup>2</sup>. Thus in a recent case of *Scott qui tam v. Brest* <sup>3</sup> the defendant lent 2000l. to plaintiff on mortgage with an usurious clause

Scott v.  
Brest.

<sup>1</sup> Noy 143.

<sup>2</sup> Leon. 96. pl. 125. M. 29 Eliz. Hawk. P. C. c. 82. S. 25. and Vin. *Usury*, 306.

<sup>3</sup> 2 Term. Rep. 238.



in the deed, that he should have 40l. as a pretended salary for receiving the rents: the deed was made and executed in London: the lands lay in Middlesex: the account was settled in London, and the receipt for the balance signed in London though a draft were given for it upon a banker in Middlesex. Adjudged, that the venue was rightly laid in London: for the *usurious taking* was the essential ground of the action; and that was in London: as was also the usurious contract, by which he was appointed receiver.

PART I.  
CHAP. V.

“ ‘ In pleading,” says Sergeant Hawkins, “ an usurious contract by the way of bar to an action, you must set forth the whole matter specially, because it lay within your own privity: “ but that in an information on the statute for “ making such a contract, it is sufficient to set “ forth the corrupt bargain generally, because “ matters of this kind are supposed to be privily “ transacted, and such information may be “ brought by a stranger.” It was said by Baron Manwood in *Sir Woolaston Dixy’s case*<sup>1</sup>, that “ there was a case in this court in the time of “ this Queen that the defendant had taken “ more than 10l. in the 100l. but in the information no corruption in the bargain was al-

How an usurious contract is to be pleaded.

<sup>1</sup> Pl. C. c. 82. S. 24. *Bede v. Sanderfon*. Cro. Jac. 440.

<sup>2</sup> 1 Leon. 96.

“ ledged

PART I. "ledged and therefore judgment was given  
CHAP. V. "against the informer."

I shall not detain my reader by entering into the particular modes and forms of specially pleading in actions upon Usury: the scope of this work being to ascertain the great leading principles of action in all, that concerns Usury and *Annuities* to which I now proceed.

---

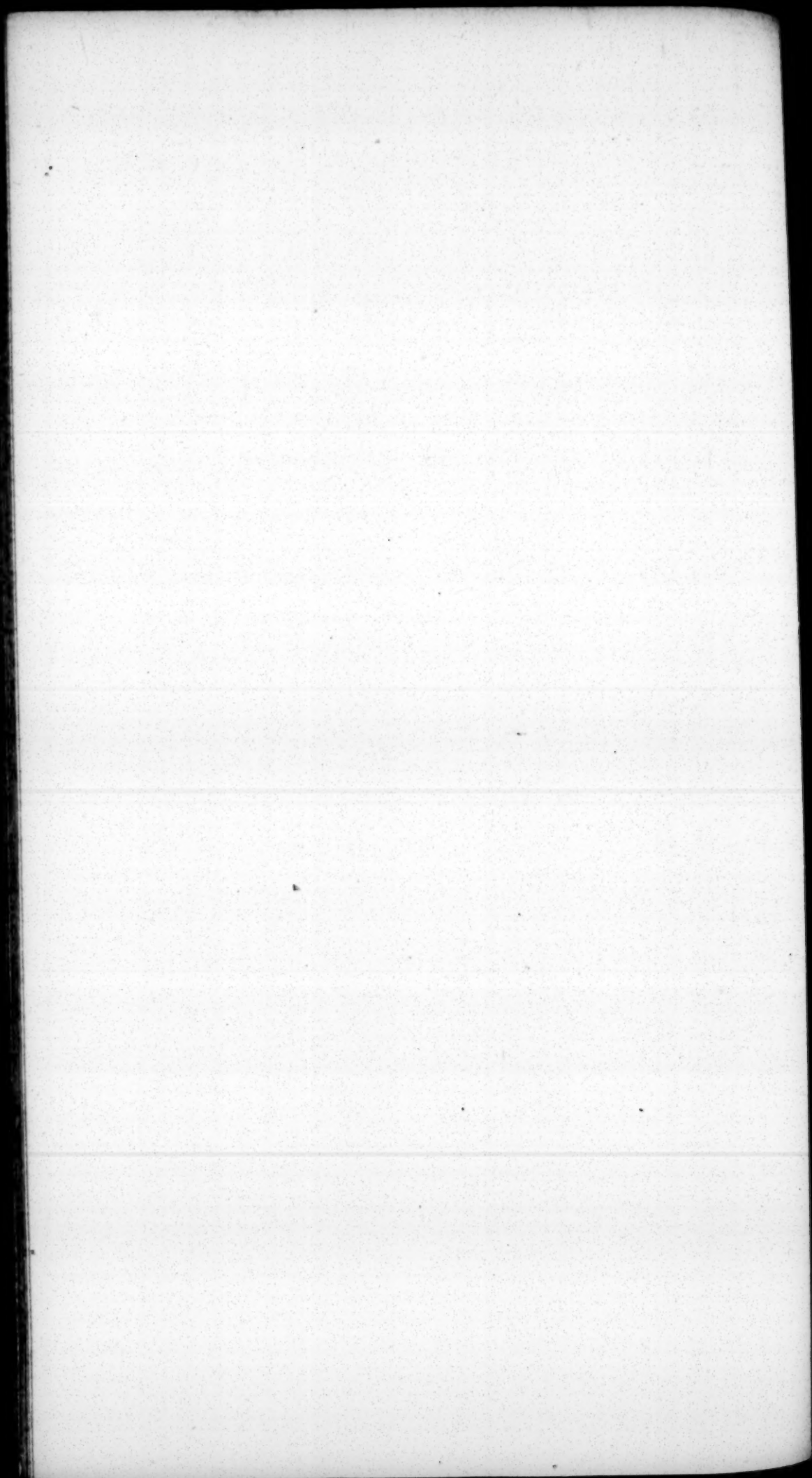
PART II.

OF ANNUITIES.

---

Q





---

# PART II.

## OF ANNUITIES.

---

### CHAP. I.

#### OF ANNUITIES IN GENERAL.

##### CONTENTS.

*Political Tendency of Life Annuities, particularly as to Members of Parliament—How Advantage taken of Distress to be considered—What Annuities and Rent Charges—Annuity by Prescription—Effects of the Remedies for recovering an Annuity—How Grants operate with or without the Word Heirs—How Grants void as Rent Charges may be good as Annuities—How Annuities may be affected: they are assignable—Of the Election and how determinable by the Grantee—How they become extinct—Of the*

*Rèmedies—Where Writ of Annuity lieth, and where Debt—Where Lands lie in divers Counties, no Assize but Writ of Annuity lieth.*

PART II.  
CHAP. I.

Political  
mischief of  
Life Annui-  
ties.

MY object is not merely to investigate or discuss the abstract nature of Annuities by the laws of England, for such a view of the subject presents nothing, but what is in itself so perfectly indifferent, that imagination can scarcely connect it with consequences of any moment, much less of incalculable mischief to the State. Yet is it scarcely possible to conceive a domestic evil, big with such fatal menace to the very being of the constitution, as the present prevailing traffic of Life Annuities. If Englishmen see in an hereditary house of peers, the mediators between themselves and their Sovereign, the protectors and guardians of each other against mutual incroachments and abuses, if they behold in them a select body of their countrymen gifted by the constitution with rights and privileges for the purpose of ensuring their probity and independence by their station and opulence<sup>1</sup>. If in looking up to their own representatives in parliament as to men placed out of the reach of corruption, they should nevertheless find amongst

<sup>1</sup> So was it said in *Nevil's case*, 7 Rep. 34. "That every one of the nobility is presumed in law to have sufficient freehold *ad sustinendum nomen & onus*."

them



them some born down and staggering under the resistless pressure of these annual payments, they might learn from fatal observation how needy senators could barter away those liberties, which were once thought not to have been too dearly purchased by the best blood of their ancestors. The poverty, which is engendered by these Life Annuities is of a cast peculiar to itself: they appear to rivet the grantors to overstrained expenditures, whilst they bereave them of the absolute means of supporting them. They consume the vitals, before the exterior is even visibly affected. To such as reflect seriously upon the effects, which this dreadful canker may operate upon the parliamentary conduct of those, whom it has once fastened upon, the axiom of the great Lord Burleigh, *that England can never be undone but by a parliament*, may neither appear visionary nor remote.

It would be difficult to say, whether this corrosive worm had already eaten out more estates in possession or reversion. The evil pervades every rank of persons, to whom the constitution meant to ensure an honourable independance. It is violated therefore in every instance, in which a man holds the station and duty bereft of the means, which his country affords, as necessary for fulfilling them. It is impossible to enume-

Q 3

rate,

PART II.

CHAP. I.

Effects of  
Annuities  
upon Par-  
liaments.

PART II.  
CHAP. I.

rate, though we daily and bitterly lament the evils, which the sales of Annuities engender in the senate, in the army, in the navy, in the church : in every walk of life, in which a dissipated, inconsiderate or unfortunate man may possess or expect a stated income. The ill fated wretch, with this millstone around his neck must despair of reaching the shore or even of keeping his buoyancy in the waves : unlike to all other debts, in spite of every effort and struggle to bear up against them, the daily increasing gravity of these incumbrances forces him down to irretrievable ruin. It is too lamentable to dwell upon the violence of temptation, to which a man of the highest rank and fairest reputation is exposed under the unsupportable torture of these self-renovating incumbrances.

Redress to  
the sufferers  
is the object  
of this publi-  
cation.

I wish not to surcharge this work with any discussion not immediately relevant to the object I have in view in submitting it to the public. This object is no other, than to furnish, if I possibly can to the distressed and oppressed debtor a faithful chart of the rocks and shoals, upon which he may have foundered ; a *tabula in naufragio* ; a distant sight of land after the expenditure or loss of all his stores and provisions. Various and contrariant as are the ideas of Usury, there is one point, in which all men have agreed, (if I  
except

except Mr. Bentham) who have treated the subject; and that is, wherever by oppression or extortion the possessor of money seizes the advantage of his neighbour's distress, and for the accommodation of any sum imposes upon him such unreasonable and harsh terms, as aggravate instead of alleviating his wants, there the lender breaks through the first principle of human sympathy, which is the cement of social intercourse. Here the Legislature rightly interferes, and from duty punishes, where it can individuate the fact, this glaring contempt and breach of a first principle of social nature. If on one side there be real distress and want, and on the other any species of extortion or oppression, the Legislature always means to favour and protect the former, and to expose and punish the latter. If therefore the spirit of the Usurer be discoverable under the mask of purchasing undervalued Annuities, or in any other disguise, the law will not be baffled by the delusive visor, but will resolutely attack the substance, and punish the insatiate monster, for gorging on the expiring vitals of his exhausted neighbour under the pretended sanction of *legality*. I proceed therefore in my enquiry into the general nature of Annuities under the avowed impression, that the sale of them for the lives of the sellers is a destructive traffic, that overwhelms the nation

Advantages  
taken of dis-  
tress against  
social na-  
ture.



PART II.  
CHAP. I.Annuity  
and Rent  
Charge.

with all the dreadful consequences, that have ever been attributed to the most corrosive Usury<sup>1</sup>.

An Annuity in the strict technical acceptance of the word, is defined by Lord Coke <sup>2</sup>, "A yearly payment of a certain sum of money, granted to another in fee, for life or years, charging the person of the grantor only." A Rent Charge differs from an Annuity by the na-

<sup>1</sup> Of these Annuities Mr. Erskine has spoken with his usual energetic eloquence (Refl. 26. 27.) "Annuities for the life of the seller, which are by far the most common and for which seldom more than six years' purchase is given, cannot be defended on any principle of public utility or social advantage; and common sense will inform the most simple apprehension that every contract which cannot rest itself upon one or other of these principles, must be dishonest, unjust, and destructive of the spirit of every human intercourse, which is general and reciprocal benefits. There is no honest trade so lucrative, as to allow a profit on money borrowed by Annuity at six years' purchase, and therefore there can be seldom one of that sort sold but upon some sudden emergency, or some very pungent distress, which this scandalous contract palliates for a moment, to rivet it the closer and to confirm it for ever; like the medicines of a quack, or the bottle of a drunkard, which rock the senses for an hour to awake an idiot or a cripple.

"And shall a hydra," continues he, "of this kind be suffered to spread destruction through society under the auspices of law? Shall the dignity of a court of justice be debased by enrolling judgments confessed under the duress of necessity or the delirium of passion?"

<sup>2</sup> Co. Lit. 144.

ture of the fund, which is land, out of which it is issuing.

PART II.  
CHAP. I.

As to the general object of my enquiries it is perfectly immaterial, whether or no the Annuities affect the lands or the person only of the grantors. In few or none of the cases has it happened, that the grantor having lands at the time of the grant, has not charged them with the payment of the Annuity granted, for these Annuity dealers seldom forego any security that can be procured.

An Annuity may be by prescription, although it must now be created by deed or will. And the sure test of the difference between an Annuity and a Rent Charge is the remedy, which the Law gives for recovering the arrears. Thus a man in *replevin* prescribed<sup>1</sup>, "that the plaintiff  
"and his ancestors have used to pay 10s. rent  
"per annum to him and his ancestors for the  
"same common, and so avowed for the 10s;  
"and it was holden good *per curiam*, &c. This  
"is not Rent, but *Annuity*, for he cannot have  
"assize, for he cannot have rent out of his own  
"land: and yet a good prescription *per curiam*:  
"but he ought to alledge seisin, and so see pre-  
"scription to distrein in his own land." Of such

Annuity by  
prescription.

<sup>1</sup> Br. Ab. tit. Prescription. 1. cites 26 H. VIII. 5.

effect

PART II.  
CHAP. I.Effects of  
the choice of  
remedies.

effect are the remedies for recovering the arrears of an Annuity or Rent Charge, that the choice of them will determine the nature and quality of the grant. Therefore says Littleton<sup>1</sup>, "If  
 " a man grant by his deed a Rent Charge to  
 " another, and the rent is behind and the gran-  
 " tee may choose, whether he will sue a writ of  
 " Annuity for this against the grantor, or dis-  
 " trein for the rent behind and the distresse de-  
 " tain until he be paid. But he cannot do or  
 " have both together, &c. For if he recover by  
 " writ of Annuity, then the land is discharged  
 " of the distress, &c. And if he do not sue a  
 " writ of Annuity, but distrein for the arrear-  
 " ages, and the tenant sue his replevin and  
 " then the grantee avow the taking of the dis-  
 " tress in the land in a court of record, then is  
 " the land charged, and the person of the grantor  
 " discharged of the action of Annuity."

How to dis-  
charge the  
person of an  
Annuity.

This election of the grantee to convert an Annuity into a Rent Charge and a Rent Charge into an Annuity by the application of his remedy shews, that every Rent Charge is properly speaking an Annuity, though every Annuity be not a Rent Charge, until by such determination in the choice of the remedy, the grantee may have

<sup>1</sup> Harg. and But. Co. Lit. 144.



made it *personal* by charging the person of the grantor, or *real* by distreining on his land. "Also," continues Littleton<sup>1</sup>, "if a man would that another should have a Rent Charge issuing out of his land, but would not that his person be charged in any manner by a writ of Annuity, then he may have such a clause in the end of his deed: *Provided always, that this present writing nor any thing therein specified, shall any way extend to charge my person by a writ or an action of Annuity, but only to charge my lands and tenements with the yearly rent aforesaid, &c.* Then the land is charged, and the person of the grantor is discharged." Several very important observations are to be made with reference to the manner of granting Annuities.

In the first place, if a man grant an Annuity to another and his heirs, without saying for *himself and his heirs*, it shall determine by the death of the grantor: although he may so grant a rent out of land, or a Rent Charge, of which he is seised; for this charges the land, and the Annuity the person only<sup>2</sup>.<sup>3</sup> "But if a Rent Charge," says Lord Coke, "be granted to a man and his heirs, he shall not have a writ of Annuity against the heir of the grantor, albeit he hath assets, unless the grant be *for him and his*

Grants with  
and without  
the word  
*heirs*.

<sup>1</sup> Ibid. sect. 220. 146.

<sup>2</sup> Bro. Ab. Charge, pl. 54. and *Estates*, pl. 65.

<sup>3</sup> Co. Lit. 144.

"*heirs.*"

PART II.  
CHAP. I.

Exception of  
bodies poli-  
tic.

“*heirs*’.” The reason is, because our law pre-  
sumes, that it is not intended to include the heir  
in the obligation, where he is not named; and  
consequently in the case supposed by Lord Coke,  
it is too late to elect to make the Rent Charge an  
Annuity after the death of the grantor. It would  
be the same, though the grantor should by his  
deed oblige himself and his heirs to warrant the  
Annuity to the grantee and his heirs; for this  
does not enlarge the grant: *car guaranty ne possit  
amender un estate*. This reasoning however fails  
in its application, if the grantor of the Annuity  
be a body politic, and as such have perpetual  
continuance.<sup>1</sup> As if formerly an abbot with con-  
sent of his convent had by deed under their com-  
mon seal granted an Annuity to another in fee,  
without saying for *him and successors*, yet would  
his successors have been charged with the An-  
nuity: and so was it adjudged in *Sir Thomas  
Wroth’s* case, that although the King had granted  
to him an Annuity without saying in the patent  
for his *heirs and successors*, yet that it would bind  
his successors: for he granted it as King in his  
political capacity, which is perpetual. In *Bod-  
vell v. Bodvell*<sup>2</sup> the court held, that an Annuity,  
which charges the person who grants it, though

<sup>1</sup> Not. ibid. Vin. 2. V. 505. Bro. Ab. *Annuities*, pl. 13.

<sup>2</sup> Plow. 457.

<sup>3</sup> Cro. Car. 170.

with

with a clause of distress, not being granted for *himself and his heirs*, until election made and a distress taken is merely personal: and therefore that a release of actions personal is clearly a bar.

<sup>1</sup> Where a person intending to grant a rent does it in such a manner, as to be void as a Rent, yet it shall be generally good as an Annuity: as if the land, out of which it is to be issuing do not belong to the grantor; the fund, with which it is charged be insufficient; the person directed to pay it be misnamed; or the sources, out of which it is to arise be uncertain precarious or imaginary. For in general the words in the deed, *to perceive out of* operate as a limitation, from whence the grantee is to receive what is granted. And this difference was taken, where it is granted by the name of parcel of another rent &c. and where it is granted to perceive of such a sum &c. For in the first case if the grantor have no such rent, the grant is wholly void: in the second, it is good to charge the person by the word *perceive*<sup>2</sup>.

How a void  
Rent Charge  
may be a  
good An-  
nuity.

Having said thus much upon the necessary modes or forms of granting Annuities, it will be natural to turn our thoughts to the effects of the grants, which will bring under consideration the advantages, that accrue to the grantee by the grant, the uses, to which he may convert the

<sup>1</sup> Vin. 2 V. 507. gives a long list of the cases in which grants void as Rents have been adjudged good as Annuities.

<sup>2</sup> E. o. Ab. *Grauntes*, pl. 4.

thing



PART II.  
CHAP. I.How An-  
nuities may  
be affected.

thing granted, and the remedies and redress, that he enjoys for securing payment and continuance of the Annuity.

As Annuities may be granted in fee-simple, it may be proper to remark <sup>1</sup>, that an Annuity of inheritance is forfeitable for treason as an hereditament, yet being *personal* it is not an hereditament within the Statute of Mortmain of the 7th Edward I. St. 2; nor is it intailable within the Statute *de donis* <sup>2</sup>. Nor can a fine be levied of an Annuity <sup>3</sup>. Nor can it be taken for assets, because it is no freehold in the law; nor shall it be put in execution upon a statute merchant, statute staple, or *elegit* as a rent may <sup>4</sup>.

<sup>1</sup> Harg. and But. Co. Lit. 2.

<sup>2</sup> It is not to be imagined, because an Annuity is not strictly intailable under the statute *de donis*, that therefore, it may not be limited or settled in the nature of an intail. Thus says Mr. Hargrave in one of his valuable and learned notes upon Co. Lit. 20. "By a series of decisions within the last two centuries and after many struggles in respect to personality, it is at length settled, that every species of property is in substance equally capable of being settled in the way of intail, and though the modes vary according to the nature of the subject, yet they tend to the same point, and the duration of the intail is circumscribed almost as nearly within the same limitation as the difference of property will allow." The rule being for a life or lives in being and 21 years after.

<sup>3</sup> Sheppard's Touchstone by Hilliard, 4th ed. p. 11.

<sup>4</sup> Doctor and Student, 90.

Lord Coke <sup>1</sup> particularly says, that “not only the grantee and his heirs, but his and their grantees also shall have a writ of Annuity.” Which evidently imports, that the Annuity is of it’s nature assignable or transferable. Yet it formerly was much doubted whether it were not as incapable of being assigned, or granted over as debt or any *chose en action*<sup>2</sup>. But that was over-ruled in the case of *Gerard v. Boden*<sup>3</sup>. And in *Maund’s* case, it was resolved<sup>4</sup>, “that a rent granted to one and his assigns *pro concilio impendendo* may be assigned over by the express words of the grantor, who granted it to him and his assigns.” And it was said<sup>4</sup> “that an Annuity was more than a *chose en action*, for it may be granted over.”

PART II.  
CHAP. I.

Annuities  
are assign-  
able.

Election of  
the remedy.

The right of election which the grantee enjoys of charging the person or distreining on the land is a very important consideration, as the exercise or waiver of this right may materially affect the interests both of the grantor and grantee. It is not however to be imagined, that any other action, which a grantee may bring against the grantor for the arrears of the Annuity, such as debt, covenant or the like, will operate the same

<sup>1</sup> Bro. Annuities, pl. 8 and 19.

<sup>2</sup> Het. 80. C. B. 3 Car. 1.

<sup>3</sup> 7 Rep. 28.

<sup>4</sup> Ow. 3. Pasch. 26 E. 1. anon.

PART II.  
CHAP. I.

What rents  
may not be  
converted  
into Annui-  
ties.

effect as a writ of Annuity ; which is a specific remedy and attended with this specific effect. Nor will the determination of the grantee's election to make it a Rent Charge preclude him from any other remedy than the writ of Annuity. But before we specify the instances, in which he may make his election, and when his right of election is determined, it will be proper to mention generally the species of rent, which are not of their nature capable of being converted into Annuities. As for instance<sup>1</sup> no Annuity lies upon a rent created by way of reservation : nor upon a rent granted for owelty of partition, because it is of the nature of the land descended : nor upon any such rent, as may be granted without a deed, though it be in fact granted by deed : nor upon any rent due by prescription against<sup>2</sup> an heir ; because it cannot be known, whether he have any land by descent from the same ancestor, who granted the rent<sup>3</sup> : nor upon a rent granted for allowance of dower or recompence of a title, because it is in satisfaction of a thing real, and therefore shall not fall into matter personal, but retain the nature of the thing, for which it is given.

Neither the presumption of law, nor the ex-

<sup>1</sup> Co. Lit. 144.

<sup>2</sup> Bro. Annuities, pl. 45.

<sup>3</sup> Poph. 87. Hil. 37 Eliz.



## PART II.

## CHAP. I.

Of the determination of the election.

*preſs grant as rent*, ſhall take away from the grantee the benefit of his election, where no default was in him. Therefore ſaid Popham Ch. J. if a *Rent Charge be granted in tail*, the grantee may bring a writ of Annuity, and thereby prejudice his iſſue, becauſe then it ſhall not be taken to be an intail, but as a *fee-ſimple conditional ab initio*<sup>1</sup>. And we have before ſeen that an Annuity is not intailable within the ſtatute *de donis*: and the true way to bar the heir is by a common law conveyance, viz. grant, releaſe &c. If the grantee of a Rent bring an aſſize for it, he ſhall never after have an Annuity, becauſe by bringing the aſſize he has elected it to be a Rent. It is to be obſerved <sup>2</sup> “ that this determination “ of the election of a grantee muſt be by action “ or ſuit in a court of record: for albeit the “ grantee diſtreyne for the rent, yet he may “ bring a writ of Annuity and diſcharge the land. “ But if the grantee doth bring a writ of Annuity “ and at the return thereof appeare and count, “ this is a determination of his election in a court “ of record, albeit he never proceedeth anie “ further. But the purchaſing a writ of Annuity “ and entrie of it in a court of record, or of an “ aſſize is no determination of the election: be- “ cauſe a ſtranger may purchaſe a writ in the

<sup>1</sup> Poph. 87. *Fulwood v. Ward*.

<sup>2</sup> Co. Lit. 145.

R

“ name

PART II.  
CHAP. I.

Where a writ of Annuity shall not be had.

“ name of the grantee and enter it of record &c.”

<sup>1</sup> An avowry in a court of record, which is in the nature of an action is a determination of his election before any judgment given.

<sup>2</sup> If a Rent Charge be granted to A and B and their heirs, and A distrain the beasts of the grantor and he sue a replevin, A avows for himself and makes conuzance for B. A dies and B survives: B shall not have a writ of Annuity. For in that case the election and avowry for the Rent of A bars B of any election to make it an Annuity, although he assented not to the avowry. If the grantee of a Rent Charge take a lease of the land for two years, he shall never after the two years are ended, have his election to make this an Annuity <sup>3</sup>. The *purchase of the land* by the grantee of the Rent Charge or his *release of all Annuities* before he has made his election will discharge the land <sup>4</sup>. If A grant a Rent Charge to B, which is paid to him, and then B grant it over to C and the tenant of the land attorn: C shall not in that case have his election to make this an Annuity, but must take it as a Rent Charge <sup>5</sup>. In all cases, where the Rent

<sup>1</sup> Co. Lit. 145.

<sup>2</sup> Ibid. and 146. Vin. 2 V. 511.

<sup>3</sup> Dyer. 140. Poph. ubi supra in *Fulwood v. Ward*.

<sup>4</sup> Goldf. b. 83. p. 1.

<sup>5</sup> Co. Lit. 150.

Charge is apportioned by act in law, yet the writ of Annuity faileth, for if the grantee should bring a writ of Annuity, he must ground it upon the grant by deed and then must he, as hath been said <sup>1</sup> bring it for the whole.”

Besides the modes of determining an Annuity, which I have already noticed, there are several others, which it will not be improper here to remark. Wherever an Annuity is granted for the performance of any duty or service, and the grantee refuses or neglects to perform it, the Annuity becomes extinct <sup>2</sup>: as in the instances of lawyers and physicians, *pro concilio impendendo*: with this difference, that the physician must go to his patient, though the client must attend or write to the lawyer. Yet in *Mingie's* case <sup>3</sup>, a writ of Annuity was brought by him *pro concilio impenso et impendendo*. Defendant pleaded in bar, that he carried a bill to the plaintiff to be signed, and because he refused, he detained the Annuity. And *per curiam* this is no plea, for he is bounden to give advice, but not to set his hand to every bill, for this may be

How Annuities become extinct.

*Mingie's* case.

<sup>1</sup> Co. Lit. 144. “for that would not be according to the deed of grant, for either the whole must be a Rent Charge ] or the whole an Annuity.”

<sup>2</sup> Br. Annuities, pl. 7. 18.

<sup>3</sup> Poph. 135.



## PART II.

## CHAP. I.

inconvenient to him.<sup>1</sup> So if I grant an Annuity to J. S. for keeping my park and the game is not preserved through his fault, this is an extinguishment of the Annuity.<sup>2</sup> Upon the same principle, if an Annuity be granted *pro decimis*, and the grantee be unjustly disturbed of the tithes, the Annuity ceases: for these being the express considerations of the Annuities, they are thereby rendered conditional.<sup>3</sup> So again if an Annuity be granted *pro homagio et servitio*, and the grantor disclaim in the services in a writ of Annuity the Annuity is extinct.<sup>4</sup> And if an Annuity be granted so long as the grantee is *benevolens proferens et amicus* to the grantor, and the grantee labour to put the grantor out of service, it is a forfeiture of the Annuity.

Of the remedies.

The remedies, which the grantee enjoys for securing the payment and recovering the arrears of the Annuity are various according to the nature of the grant and the circumstances, by which the rights of the grantee may have been affected subsequent to the grant: and it is very material, that they should be known: for there are few sorts of Annuities, to which some of them do not apply. And as in the present sys-

<sup>1</sup> Br. Annuitic, pl. 49.

<sup>2</sup> Co. Lit. 204.

<sup>3</sup> Br. Extinguishment, pl. 37.

<sup>4</sup> Br. Annuitic, pl. 35, and double plea, 100.

tem of money lending so much is at this hour secured under or advanced upon Annuities, nothing which can affect the rights either of the grantor or grantee ought to be passed over unnoticed. And it was truly observed by the counsel in the case of the *Earl of Stafford v. Buckley*<sup>1</sup>, that “the nature of the thing may properly be illustrated from the remedy the law gives for it, the constant method of Fitzherbert and Coke.”

When an Annuity is said to be *personal* not *real*, it is not to be understood to be that species of personalty, which vests without any specific bequest in the executors. So said Lord Hardwicke in *Lord Stafford v. Buckley*. “All the rest of the personal estate, that could pass to executors would go to them: but this is a kind of personalty, which according to *Doctor and Student*<sup>2</sup> would not be affets in executors, and consequently will not go to them by being named executors.”<sup>3</sup> “Annuity in fee is a personal inheritance, what the law suffers to descend to the heir, but has nothing to do with the realty, as appears from Co. Lit. 20; and so not within the Statute of Frauds: for

How Annuity is personal.

<sup>1</sup> 2 Vez. 175.

<sup>2</sup> Dr. and Stud. p. 90.

<sup>3</sup> 2 Vez. 178.

## PART II.

## CHAP. I.

Where the writ of Annuity lieth.

“lands and tenements are only within it.” Therefore<sup>1</sup> of an Annuity there lieth no action, but only a writ of Annuity against the grantor, his heirs or successors, provided they be included in the obligation or grant. And it is an inviolable rule, that the writ of Annuity only lies, whilst the Annuity continues payable: so that if the Annuity be extinguished by act of the party, or by operation of law, before the writ is purchased, or pending the writ<sup>2</sup>, there the writ of Annuity is gone.

Where debt lieth.

In all these cases if the grantee or his assignee or his representatives wish to recover the arrears of an Annuity, which is determined, it must be by action of debt. Brooke says<sup>3</sup>, “that as long “as the Annuity continues, a writ of “Annuity lies and not a writ of debt, although the Annuity should be only for years.” And yet, he observes<sup>4</sup> “the executors shall have “a writ of debt of the arrearages of an Annuity “incurred in the time of the testator: and so “an action of debt lies for an Annuity, whilst

<sup>1</sup> Dr. and Stud. 90.

<sup>2</sup> Br. Annuities, pl. 32, cites 9 H. 7. 16. Br. Dette, pl. 145. Vin. Annuity 516.

<sup>3</sup> Br. Annuities, pl. 29.

<sup>4</sup> Ibid. 46. He refers for more concerning Annuities to Fitzherbert and Stat. and 11 Nat. Brev. and the Reg. and Book of Entries.



"it continues, and it shall be in the *detinet*,  
 "where the writ of Annuity is in the *debet*."

PART II.  
 CHAP. I.

Annuity of  
 lands in di-  
 vers coun-  
 ties.

<sup>1</sup> In Annuity the sheriff returned *nihil*, and was compelled to amend his return; for no such process as *capias* did then lie in Annuity. But since that time, by the 23 Henry VIII. c. 14, the like process may be had in every writ of Annuity and Covenant, as in an action of debt<sup>2</sup>. If a rent be granted out of land in two counties, assize does not lie, but writ of Annuity: the reason, I presume, being, because the lands of both counties cannot be put in view of the recognitors of the assize: whereas Brooke particularly says, that if a man grant rent out of land in one county, and give a power to distrein for it upon land in another county, and he bring assize, the assize shall be in the first county: but if both lands lie in the same county, they shall be both put in view.

<sup>3</sup> Lord Coke puts this case "That if A be  
 "seised of lands in fee, and he and B grant a  
 "Rent Charge to one in fee, this *primâ facie*  
 "is the grant of A and the confirmation of B,  
 "but yet the grantee may have a writ of An-  
 "nuity against both. Two men grant an An-

<sup>1</sup> Br. Annuities, pl. 5.

<sup>2</sup> Br. Rentes, pl. 22.

<sup>3</sup> Co. Lit. 144.

PART II.

CHAP. I.

“nuity of 20l. per annum to another, although  
 “the persons be several, yet he shall have but  
 “one Annuity. But if the grant be, *obligamus*  
 “*nos et utrumque nostrum*, the grantee may have  
 “a writ of Annuity against either of them, but  
 “he shall have but one satisfaction.”

It would exceed the scope of this work to enter into the minute detail of the manner, in which the grantees of Annuities may or ought under different circumstances to apply the remedies, which the law has put into their hands. For the pleadings therefore and proceedings in Annuity both before and after judgment, I refer my reader to a very complete collection of the cases by that industrious compiler Mr. Viner<sup>1</sup>.

<sup>1</sup> 2 Vol. from 517 to 525. Vid. also *Doct. Placitandi*, c. xvi.

## C H A P. II.

OF ANNUITIES FOR THE LIVES  
OF THE GRANTORS.

## CONTENTS.

*Intent of the Chapter—Propriety of imposing legal Restraints in Money Loans—Fatal Consequences of raising Money by Life Annuities—Of rescinding the Contracts for Annuities—Of Circumvention and Physical and Moral Necessity—Effects of raising Money by Annuity formerly and now—Whether Annuities can be Usurious: Lord Hardwicke's Opinions upon these Transactions—Cases in which Annuities were not Usurious—Of the Clauses of Redemption or Re-purchase having been once thought Usurious: now holden not to be so—Whether Insurances render the Transactions Usurious—Of the Adequacy of the Consideration of Annuities—Bare Inadequacy of Price not sufficient to rescind an Annuity in Law or Equity—Of illicit Considerations—Of Annuities charged upon Officers' Pay and Half-pay, and Clergymen's Livings—The Difference of Whole and Half Pay now exploded—Neither of them*



*them assignable—Clergymen's Livings not assignable or chargeable by Common Statute or Canon Law—Of avoiding Annuities charged on Livings and secured by Bond and Judgment.*

PART II.  
CHAP. II.

Intent of  
this Chap-  
ter.

IN the foregoing Chapter we have treated of Annuities in general, and most of the leading features of it are as appropriate to Annuities for the lives of the grantors, as to those of any other description. Now although the present Chapter be dedicated to Annuities only for the lives of the grantors, as they constitute the bulk of the evil, which I humbly conceive arises out of this destructive mode of raising money, yet few of the principles or points contained in it will be found inapplicable to Annuities in fee for years or for the lives of others than the grantors. It might be here expected, that I should notice the acts of the Legislature upon the subject: but since the Annuity Act, which was passed in the 17th year of his present Majesty, has created almost a new system of Life Annuities, I shall reserve the consideration of that statute and of the law consequent to it for the ensuing Chapters. In the present therefore my study will be to disclose both the law and the equity of Life Annuities before the passing of that act. I find this the more necessary, as most of the cases decided upon Annuities since that period, have been founded

founded upon the statute. Yet in considering particular cases, it is of no slight importance to attend to what the law was previously to the passing of the act. I shall at present therefore no further notice the act, than to authorize me to assert from the preamble, that the practice of raising money by the sale of Life Annuities, which hath of late years greatly increased, is *pernicious*.

Without repeating any thing I have before said upon the principles of our laws against Usury, I appeal to the experience of the present day in defiance of the most ingenious theory and specious arguments, whether these legal restraints do not in numberless instances prevent money-lenders from raising their terms upon borrowers in proportion to the scarcity of cash in circulation, and the variety of means, which Government holds out of making more than legal Interest by ordinary loans<sup>1</sup>. If once a competition were permitted in the market, and the price might be arbitrarily raised upon borrowers, the evils are incalculable, that would result from the adventurous spirit of our commerce, whenever an unfavourable turn of fortune, an unforeseen check, or perhaps danger of bank-

Propriety of  
legal re-  
straints in  
money  
loans.

<sup>1</sup> At the moment I am writing, little short of 20l. per cent. may be legally made by the purchase of Exchequer and Navy Bills.

PART II.  
CHAP. II.

Pernicious  
consequences of raising  
money by  
Annuity.

ruptcy were impending. I readily admit, that in some instances, a sum of money borrowed at the most extravagant Interest, might in a seasonable moment avert that ruin, which ninety-nine times in a hundred the exorbitancy of the loan would accelerate and ensure. The very exceptions from the general effects of such loans, establish their destructive tendency and consequently justify the laws framed for protecting society against the evil. It is not therefore from the few and rare instances of money raised by Annuity being converted to the laudable purpose of averting a greater evil, that we are to judge of the utility of this mode of raising money: but we are to fix our view upon the numbers, who by these means procure a temporary supply to their follies or vices, and by their accelerating powers of destruction precipitate themselves inconsiderately into inevitable ruin<sup>1</sup>.

Were

<sup>1</sup> Mr. Erskine has minutely described the rapid progress of an unfortunate man ruined by the sale of an Annuity for his own life. (Reflections, 32. 33.) "A man possessed of an Annuity of three thousand pounds per annum for his life charged on a real estate or on government security, as by an office for life of that extent, sells an Annuity of a thousand pounds per annum for six thousand pounds or six years purchase: the money being probably spent before the loan takes place, peace be to it's manes! the feller has now only an income of two thousand per annum, the other  
" thousand



Were we to follow the definition which Mr. Erskine adopts \* of Usury, viz. *an exorbitant profit exacted for a loan made to persons in distress*: it is but too obvious, that few Annuities for the

PART II.  
CHAP. II.

Annuities  
done for ac-  
commoda-  
tion of mo-  
ney.

"thousand being pledged for the sum borrowed; and as he  
"could not live before upon three we may suppose two as  
"not sufficient to defray his expences, which will oblige  
"him to encroach on the other thousand, which only re-  
"mains in his hands, waiting the broker's call. In six  
"months five hundred pounds become due to the lender,  
"who upon apology made bows and says it is mighty well,  
"but at the end of other six months five hundred pounds  
"more being due and the broker having great necessity for  
"the sum, is extremely sorry to be troublesome, and is very  
"willing to be paid it on the most agreeable terms to the  
"gentleman, who has no other way left than by selling ano-  
"ther Annuity of two hundred pounds per annum at five  
"years purchase to liquidate this accumulated Interest. Now  
"if the gentleman's expences continue the same, and they  
"are rarely found on these occasions to diminish, his difficul-  
"ties will naturally increase, when his funds are reduced to  
"eighteen hundred pounds; the Interest will grow up again  
"and must be satisfied in this accumulating ratio of ruin.  
"Thus the fall of a spendthrift is like that of all other falling  
"bodies: the velocity is increased as the distances decrease  
"from the attracting centre: this history of an individual  
"has a strong analogy to a nation which anticipates the re-  
"venues of posterity and deserves to be well considered by  
"the trustees of the public."

\* Reflec. 21. This he says has more truth, though less legal precision in it, than Lord Coke's definition, viz. *the gain of any thing above the principal exacted in consideration of the loan.*

lives

PART II.  
CHAP. II.

How far  
contracts for  
Annuities  
may be re-  
scinded.

lives of the sellers would be clear of Usury: for it rarely, if ever happens, that in the traffic of these Annuities, which is no other than the accommodation of money by money lenders there is not avarice on one hand and necessity on the other. This must produce oppression: and the same eloquent advocate for humanity and benevolence assumes, <sup>1</sup> that every oppression of a fellow creature is *malum in se*: and oppression, as I have before remarked, (p. 71.) is punishable by the common law of the land. The high sense of honor and integrity, which animates Mr. Erskine's breast, seems to have drawn from him a sentiment upon this subject more congenial with his feelings, than consistent with the legislative restraints and injunctions, which he either supports or recommends. <sup>2</sup> "I hold every gentleman to be so indelibly bound by every contract voluntarily entered into without circumvention and at the years of discretion, that no exception can be taken to it by himself as an individual, without doing an injury to his character; that nothing but one universal injunction of the

<sup>1</sup> Refl. 35.

<sup>2</sup> Refl. 35. To the publication of these Reflections by Mr. Erskine in 1776 I cannot help attributing the earnestness with which the Parliament took up the subject in the ensuing year, as we shall see more fully in the next Chapter.

"Legif-

“Legislature founded upon reciprocal justice can  
“remove or even moderate the oppression: and  
“that even then, if a solid objection could be  
“offered to it’s equity, no man of honour could  
“receive it’s protection.”

With the greatest deference to so great an authority I humbly suggest, that most if not all contracts of Oppression and Usury are *voluntary* entered into by the aggrieved party, in as much as he proposes solicits and perhaps urges and insists upon the execution of the contract: there can be no circumvention on the part of the lender, if the eyes of the borrower be completely open to the terms of the bargain. The bare taking advantage of the distress and necessities of another is an offence of a different quality from that of circumvention or fraud. Lord Mansfield therefore said, that the Statutes of Usury were made to protect men with their eyes open against themselves.

The contracts for Annuities not entered into by circumvention.

It is because moral is no less compulsive than physical necessity, that equity protects the agent under the former, as the law does under the latter. It would in fact be difficult to determine, whether greater freedom were exercised in the refusal of a purse to a highwayman, or in the rejection of the exorbitant demands of an Usurer in a case of urgent distress.

Moral and physical necessity.

I do



## PART II.

## CHAP. II.

Effects of  
raising mo-  
ney by way  
of Annuity.

I do not in legal precision hold myself justified to speak of these Life Annuities in the words of an anonymous author<sup>1</sup>, who has favoured the public, with some very poignant *Reflections on Usury as conducted by the mode of undervalued Annuities*. But certain it is, that this is the baneful source, from which modern follies extravagancies and misfortunes derive a momentary suspension from a gradual decline, to aggravate their untimely dissolution with unspeakable horror and tortures. The effects of this *most destructive species of Usury*, as this anonymous author observes, *under the disguise of undervalued Annuities*, are precisely similar to those, which Dr. Wilson attributed to another species of Usury above two centuries ago. Those, who are in the habits of preferring the liberality and improvements of this enlightened age to those, which produced our earlier ancestors, will make the proper allowances for the differences, as well as those whose veneration for antiquity represents every thing modern as degenerate and depraved. The facility of raising money upon exorbitant terms in those days was such as “maketh wanton princes to make warre, noblemen riotous to spend without reason, young gentlemen unthrifitie to bring all to naught, after they are

<sup>1</sup> London 1796. Printed for Murray and Hightley.

“newlie

"newlie come to their lands, and so to take the  
 "verie high waie to undoe themselves for euer ;  
 "as everie daie it doth appeare not onlie in gen-  
 "tlemen, but in some great states and lordes of  
 "this lande." He further adds, that "lending  
 "to mainteine the outrageous excess and foolish  
 "riot of manie is a devise used more here in  
 "Englande than in anie place, that I know in  
 "Christendome. For if monie might not so  
 "soone be had of those covetous Usurers, most  
 "men would live within their bounds and leave  
 "their wanton apparell, their unnecessarie feast-  
 "ing, their fond gaming and their lewd hazard-  
 "ing of great wealth and revenues without all  
 "wit upon a maine chaunce at dice, or upon a  
 "card or two at Primero or other vaine devilish  
 "games. For so these unthrifts may have money  
 "to serve their lusts and to hazard their chaunce  
 "they care not what to paie." These sketches  
 of a very old school are the exact outlines of  
 many modern portraits : and as the characteristic  
 features in both are so plainly cognizable, there  
 can be little doubt of the common lineage, from  
 which they spring. Through all the variations of  
 coustume and drapery we trace in the complexion  
 eyes and features the never varying symptoms of  
 that baneful *tabes*, which the slightest touch of  
 Usury infallibly diffuses through the system.

In order to proceed more orderly in our dis-

S

cussion

PART II.  
CHAP. II.Division of  
the Chapter.

cussion of the nature of these Annuities for the lives of the sellers, I shall first consider them under all respects as not affected by the Annuity Act; which will bring under examination 1<sup>o</sup>. their validity with reference to their contract, 2<sup>o</sup>. with reference to their consideration and 3<sup>o</sup>. the powers exercised by the different courts of law and equity in setting them aside.

The first question then to be resolved, is:

Are Annuities  
usurious?

*Are such Annuities usurious?* To which the direct answer is negative: but although they be not usurious of their own nature, yet many concomitant circumstances may render them so. We must therefore start upon the ground laid down by Judge Blackstone in *Murray v. Hardinge*, that *every case of Usury must depend upon its own circumstance*: he at the same time added, that “he did not know an instance, where the Principal was *bona fide* hazarded, that the contract had been held to be usurious. If the price be inadequate to the hazard, it may be an imposition, and under some circumstances relievable in equity: but it cannot be *legal Usury*.” I here presume, the learned Judge confined himself to Statute Usury.

Lord Hardwicke's opinions upon these transactions.

I cannot more forcibly introduce this discussion, than in the words of the great Lord Hardwicke, in *Lawley v. Hooper*. “There

3 Atk. 278.

“has



" has been a long struggle between the equity  
 " of this court and persons, who have made  
 " it their endeavour to find out schemes to  
 " get exorbitant Interest to evade the statutes  
 " of Usury : the court very wisely has never laid  
 " down any general rule, beyond which it would  
 " not go, lest other means of avoiding the equity  
 " of the court should be found out : therefore  
 " they always determine upon the particular  
 " circumstances of each case." On this occasion  
 his Lordship added, " I really believe in my con-  
 science, that ninety-nine in a hundred of these  
 " bargains are nothing but loans turned into this  
 " shape to avoid the statutes of Usury." In the  
 great case of *Chesterfield v. Jansen* <sup>1</sup> Lord Hard-  
 wicke said of *post obit* bargains, what is equally  
 applicable to Annuities: " As they are produc-  
 " tive of prodigality on the one hand, so do they  
 " beget extortion on the other: want and avarice  
 " always generating one another ; and these con-  
 " tracts may be truly said to be *vitia temporis*.  
 " This court can certainly relieve against all kinds  
 " and species of fraud. Fraud may either be  
 " *dolus malus*, a clear and express fraud, or fraud  
 " may arise from circumstances, and the necessity  
 " of the person at the time. There are also hard  
 " unconscionable bargains, which have been  
 " construed fraudulent, and there are instances,

<sup>1</sup> 2 Atk. 351.

## PART II.

## CHAP. II.

Cases by  
which An-  
nuities have  
been esta-  
blished.

Fountain v.  
Grimes.

“ where even the common law hath relieved for  
“ this reason expressly <sup>1</sup>. ”

Before I enter into the different circumstances,  
which may infect the case, and convert a con-  
tract for an Annuity into Usury, it will be pre-  
viously proper to refer to some of the cases, by  
which the validity of these Life Annuities cleared  
of any such circumstances hath been established.  
The case of *Fountain v. Grimes* <sup>2</sup> which is re-  
ported more fully by Bulstrode than by Croke,  
arose upon the defendant's pleading the statute  
of Usury in an action of debt upon a bond for  
securing an Annuity for the lives of the plaintiff  
his wife and son. The plaintiff, it seems, had  
applied to the defendant to lend him 100l. at  
ten per cent, which was then legal Interest: this  
was refused, and the bond was entered into for  
payment of an Annuity of 20l. for the three lives  
in consideration of 100l. paid by Fountain to  
Grimes. And it was adjudged, that this being  
an absolute bargain for an Annuity was out of  
the statute of Usury. “ But,” says Bulstrode,  
“ otherwise would it have been, if there had  
“ been any provision made for the repayment of  
“ the said sum of 100l. unto him within any cer-  
“ tain time, and in the mean time the yearly  
“ payment of the 20l. Annuity to continue, this

<sup>1</sup> Vid. antea. p. 71.

<sup>2</sup> Cr. Jac. 252. Bulf. 36.

“ had

"had been a clear usurious agreement, and  
"lending within the statute."

PART II.  
CHAP. II.

In *Tanfield v. Finch*<sup>1</sup> the defendant gave to the plaintiff 566l. for an Annuity of 120l. for twenty-three years. "This is clearly no Usury, when  
"there was no communication before between  
"them for the loan: the Annuity was purchased  
"bonâ fide, and had it been 40l. per annum for  
"forty years for 100l, it had been no Usury:  
"no more than if for 100l. one purchase lands  
"worth 40l. per annum." Although in this case real security were added for better assuring the Annuity, yet this altered not the case. In *Dr. Goad's case*<sup>2</sup> Popham and Plowden held, that if a man give 100l. for an Annuity of 20l. this is not Usury, for he shall never have his stock of 100l. again. But *Bell Ch. Bar.* held clearly, that if there had been any communication between the parties about a loan, and that for an evasion out of the statute they had invented this or any such practice, this would be Usury, although he never should have his 100l. again.

*Tanfield v.*  
*Finch.*

*Dr. Goad's*  
*case.*

In *Chesterfield v. Jansen*<sup>3</sup> Judge Burnet speaks most decidedly upon this matter. "Supposing  
"there is a purchase of an Annuity at ever such  
"an under price, if the bargain really was for an

Annuity  
may be  
usurious.

<sup>1</sup> Cr. El. 27.

<sup>2</sup> Trin. 19 El. in Sac.

<sup>3</sup> 2 Vez. 142.



PART II.

CHAP. II.

“ Annuity, *it cannot be Usury* : but if the communication was about borrowing and lending, it may be Usury within the statute : and how? If by reason of all the circumstances and of the communication, the exility of the sum given, the original contract being a borrowing and lending, the court thinks the Annuity was a mere device to pay the Principal with usurious Interest to evade the statute, this will be within the statute; though on the face of the bargain it appears ever so fair a sale of an Annuity: the contrivance of the Annuity as the usurious reward for the loan of money, shall not evade the statute made for the benefit of mankind. This I take to be the sum and substance to be collected out of the several cases. <sup>1</sup> Cr. El. 27. <sup>2</sup> 4 Leon. 208. <sup>3</sup> Noy 151. <sup>4</sup> Brownl. 180. and <sup>5</sup> 2 Leo. 7.

In the case of <sup>6</sup> *Sir William Stanhope v. Cope*

<sup>3</sup> *Tanfield v. Finch*.

<sup>2</sup> *Fuller's* case, 300l. given for Annuity of 50l. for four lives not Usury, if no communication had about borrowing and lending.

<sup>3</sup> *Symonds v. Cockrill*, 300l. given for Annuity of 20l. for eight years and two years more if three men so long live : no Usury, if no communication about a loan.

<sup>4</sup> *Cotterel v. Harrington*, *mutatis nominibus* this is exactly the same case as the last, only that it is here alledged to have been upon a lending.

<sup>5</sup> *King v. Drury*.

<sup>6</sup> 2 Atk. 232.

and

and Roberts executors of Spinkes Lord Hardwicke decreed a *junctim* Annuity granted by Sir William Stanhope for the life of himself and the grantee to be redeemed, according to a proviso contained in the deed to that effect. The terms of this Annuity were unfavourable to Sir William Stanhope: but yet the Chancellor would not decree the redemption *ab initio* merely on that account; but only from the time, at which Sir William Stanhope had offered to redeem. At the recommendation of the Chancellor the matter was compromised, and after the Register had drawn up minutes of the agreement his Lordship “declared he had a very great aversion to contracts of this kind, and that he was very inclinable to decree a redemption *ab initio*, if it could have been consistent with the rules of equity.” There cannot surely be a stronger proof, that bare or slight inadequacy of consideration will not render such an Annuity voidable in equity, any more than in law: but then the contract for such Annuity must be completely clear of imposition oppression extortion and fraud of every nature whatsoever.

The great case, which settled the legality of these Annuities for the lives of the sellers, was that of *Murray and Hardinge*, in which it was determined, after several most elaborate arguments, that an Annuity at six years’ purchase for

Murray v.  
Hardinge.

PART II.  
CHAP. II.

the life of the grantor, then of the age of thirty, two years, with a clause for redemption at the option of the grantor after the expiration of five years for five years and a half's purchase was not usurious. This determination was pointedly decisive, as it was recited in the Annuity deed, that the agreement had been made for a loan of the money, which was paid as the price or consideration for the Annuity. And it having been made to appear to the court, that this recital was made by the attorney without any privity or direction of his client, who really and substantially meant to purchase an Annuity, the court determined "That the inaccuracy of the recitals in "this instrument shall not vitiate a contract, that "otherwise seems to be a fair one."

Modes of  
evading the  
principles  
against Usu-  
ry.

De Grey Ch. J. in giving judgment upon this case observed that "it was essential to "the nature of an usurious contract, that there "must be 1<sup>o</sup>. a loan; 2<sup>o</sup>. that *illegal Interest* is "to be paid for such loan. And it is essential to "the nature of a loan, that the thing borrowed "is at all events to be restored. If that be *bonâ* "*fide* put in hazard, it is no loan but a contract "of another kind. So also if *illegal Interest* is "to be certainly paid, or even upon a reasonable "possibility, the contract is usurious." To evade which principles many expedients have been tried. As



1<sup>o</sup>. To make the *Interest* precarious and uncertain <sup>1</sup>.

2<sup>o</sup>. To make the Principal itself precarious <sup>2</sup>.

3<sup>o</sup>. Communication concerning a loan has sometimes infected the case and turned a contract into Usury <sup>3</sup>.

4<sup>o</sup>. Inequality of price is also a suspicious circumstance, especially if very inadequate <sup>4</sup>.

5<sup>o</sup>. If a power of redemption be given, though only on one side it is a strong circumstance to shew it a loan, though not conclusive <sup>5</sup>.

6<sup>o</sup>. The form of the instrument, (if so meant) importing a loan may render the contract usurious <sup>6</sup>.

<sup>1</sup> If clearly a loan, the possibility of the Interest becoming precarious will not signify. *Roberts v. Tramayne*, Cr. J. 507.

<sup>2</sup> Here the question will always be, Is it a fair *bonâ fide* hazard? If otherwise it will be usurious; and no inequality of price will condemn a fair hazard. Dodderidge's Rule (as antea) was hereto applied.

<sup>3</sup> This communication must be with the party himself, not with his attorney. There is no case, where a meditated loan has been converted into a *bonâ fide* purchase and was afterwards holden usurious.

<sup>4</sup> Inequality of price under certain circumstances may make a contract unfair and unconscientious and relievable in equity, though it will not render it usurious.

<sup>5</sup> *Hooper v. Lawley*.

<sup>6</sup> But not if it be by the blunder of an agent as in *Buckley v. Guildbank*, Cr. Jac. 677. where Interest was made payable by such mistake two days after the loan.

PART II.  
CHAP. II.

Of the  
clauses of  
redemption  
or repur-  
chase.

7°. Subsequent acts of the parties may also be material evidence of intention.

In most contracts for Annuities for the lives of the sellers some agreement is entered into, for giving the seller a right or power of redeeming or repurchasing the Annuity he sells either indefinitely at his option, or after the expiration of a given time; sometimes at the exact rate of the original purchase, at other times at an increased price, and not unfrequently at a reduction proportionate to the deterioration of the life, during which the Annuity is granted. For a considerable length of time it was a generally prevailing opinion, that if an Annuity were granted with such a clause of redemption or repurchase, it was such a security for the repayment of the principal, that infected the whole transaction with Usury: it being supposed in such case, that the Principal is not really and *bonâ fide* put in hazard. Whenever therefore such an agreement made part of the contract, whilst this opinion prevailed, it was always expressed by a separate instrument or writing, or left to the discretionary honor of the parties. Since however these clauses for redemption or repurchase by the vendor are now generally introduced into Annuity deeds, it will be satisfactory to trace the origin, progress and extinction of the opinion of their usurious quality and effects.

In the before mentioned case of *Fountain v. Grimes*<sup>1</sup>, which turned upon the validity of an Annuity granted for three lives, and was determined not to have been usurious, because it was a real *bonâ fide* sale of an Annuity and no loan, both Cooke and Bullstrode in their report of the case have noticed the saying of the court; "but if there had been any provision made for the repayment of the Principal, although not expressed in the bond, it had been an usurious agreement and lending within the said statutes." Such provision for the repayment of the Principal was for a length of time supposed to be made by a clause for redemption or repurchase.

To favour and support this idea Sergeant Hawkins, whose authority has been always looked up to with great deference is supposed to have spoken most decisively: "The grant of Annuities for lives, not only exceeding the rate allowed for Interest but also exceeding the known proportion for contracts of this kind in consideration of a certain sum of money, is not within the meaning of the statute, unless there were some underhand bargain for the security of the repayment of the principal or consideration money." I cannot see that this

Sergeant  
Hawkins's  
opinion  
hereupon.

<sup>1</sup> Cro. Jac. 252. and 1 Bullst. 36.

<sup>2</sup> Pl. Cor. 2 Vol. L. 1. C. 82. Sect. 21. 7th Ed. by Leach.  
passage



PART II.  
CHAP. II.

passage in *Hawkins* any more than the dictum in *Fountain v. Grimes* is necessarily to be referred to a clause for the optional redemption or repurchase of the Annuity : but rather to a positive secret agreement for the repayment of the Principal at all events, which would directly convert it into a loan.

*Lawley v.  
Hooper.*

Lord Hardwicke in *Lawley v. Hooper* in determining that the Annuity granted by Lawley for his life with a proviso for repurchasing or redeeming it upon giving six months notice to the grantee was a loan, seemed to lay much stress upon the effect of this proviso : “ The proviso  
“ in the deed uses the word *repurchase* ; but  
“ there is very little difference in reality between  
“ the meaning of the word *redemption* and *re-*  
“ *purchase*. One of the witnesses (Sparrow the  
“ defendant’s solicitor) uses the word *redemption* :  
“ and I take the word *purchase* used in all the  
“ other depositions to be only a cant word mean-  
“ ing a sale or mortgage : and the indorsement  
“ on the back of the deed uses the words *re-*  
“ *purchase* and *redemption* promiscuously, which  
“ plainly shews, that it was considered by all  
“ parties as a power to redeem.

“ There are two circumstances more, which  
“ shew that this was intended and understood  
“ as a security. When the parties met to have

<sup>1</sup> 3 Atk. 200.

“ the

"the deeds executed, it was objected by the  
 "lender to the terms of the condition to pur-  
 "chase back, that it was made to be at any  
 "time, and he said it was usual to restrain it to  
 "a certain period of time. What does this  
 "import? It is plainly the language of a lender  
 "of a sum of money. Another circumstance  
 "is, that he insisted upon the payment of 75l.  
 "more, and would have six months notice.  
 "The consequence of this was, that he would  
 "have this time to find out another hand to  
 "take his money, and would have Interest for  
 "his money during these six months notice,  
 "but upon payment of 75l. more he might re-  
 "deem, which was the same as saying, You  
 "shall give me six months notice, or pay me  
 "six months of the Annuity. Therefore upon  
 "all the circumstances, I think this was and is  
 "to be taken as a *loan of money*, turned into this  
 "shape only to avoid the statute of Usury."

After Lord Hardwicke had expressed his  
 mind so strongly upon the operation of such a  
 proviso for redemption or repurchase at the  
 option of the grantor, it is no wonder, that the  
 tide of opinion should have flowed strongly to-  
 wards the usurious tendency or consequence of  
 inserting such a proviso in an Annuity deed, or  
 of avowing such an agreement as part of a con-  
 tract, that was not intended to be rescinded or  
 avoided.

PART II.  
CHAP. II.

Annuity  
 with clause  
 of redemp-  
 tion declared  
 a loan.

The inser-  
 tion of such  
 provisos  
 deemed  
 usurious.

PART II.  
CHAP. II.

avoided. For it is evident, that if such a proviso tend to convert the grant of an Annuity into a Loan, as Lord Hardwicke laboured to prove, it must necessarily become usurious, if the Annuity exceed the rate of five per cent upon the purchase money. In process of time, these provisos were seen in their true light: and it became generally admitted, that a right in the grantor to determine the Annuity for his own benefit or satisfaction, did not create that necessity or obligation of repaying the Principal lent or advanced at all events, without which the courts had repeatedly declared Usury against the statutes could not be committed. A proviso of this nature was recognized and established by the Court of Common Pleas in the case of *Murray v. Hardinge*, as being entirely for the benefit of the seller. In *Brown v. Richards* Lord Mansfield spoke of the proviso for redemption at the option of the seller in that manner, that clearly imported it not to infect the transaction with Usury. Nay even Lord Hardwicke himself four years before the determination of *Lawley v. Hooper*, did not seem to give any such usurious operation to this sort of proviso. For it occurred in the case of *Stanhope v. Cope*, and he there declared, that he would have decreed a redemption *ab initio* (and not merely from the time of the grantor's offering

These provisos not  
usurious.



fering to redeem) if he could have done it consistent with the rules of equity. This I presume he might have done, had the proviso rendered the whole transaction usurious.

PART II.  
CHAP. II.

In *Irnham v. Child*<sup>2</sup>, an Annuity was sold and it was agreed between the parties, that it should be redeemable, but that no clause for redemption should be inserted in the Annuity deed under the idea, that it would render the transaction usurious: and the bill was filed to compel redemption, but was dismissed, upon the ground, that where there is no fraud, parole evidence shall never be set up against a deed. And Lord Thurlow in his decree pointedly said, *To sell an Annuity and make it redeemable is not Usury, because it is not a loan.* In which opinion the Profession now universally acquiesces.

*Irnham v.*  
*Child.*

Lord Thurlow's opinion acquiesced in by the Profession.

I cannot quit this subject without drawing the attention of my reader to a very important observation made by the anonymous author of the *Reflections on Usury* concerning the effects of the insurances made upon the lives of the grantors of these Annuities; by which he attempts to prove, that as by these insurances the Principal, which is advanced as the price of the Annuity is kept out of any real hazard, the negotiation of such an Annuity is as usurious as any

Whether Insurances render the transaction usurious.

<sup>2</sup> 1 Brown. C. C. 92.

loan

PART II.  
CHAP. II.

An opinion  
that Insu-  
rances con-  
vert the An-  
nuities used  
into Loans.

loan, for which the lender secures as much above five per cent Interest, as the Annuity after the expences of the insurance leaves to the purchaser above that rate of Interest upon the principal or purchase-money advanced. If the Annuity be sold at six years' purchase, it will exceed the rate of Interest of sixteen per cent per annum: and if the life be between twenty and fifty, the insurance will amount to about four per cent; then if we consider the Annuity as the Interest of the 600l. given for it, the purchaser will clear by the transaction between twelve and thirteen per cent. And he will be more secure of his Principal, than if he had lent it upon the very best personal security at that or any other rate of Interest. But now, says the author, (p. 12.) "Let us consider, whether with all the assistance of chicanery artifice can administer, this trade will bear the test of legal discussion. Let us examine, whether a mere loan of money, without any intervening article of commerce, however diversified and denominated, can be converted into a contract at more than five per cent, without incurring the charge of Usury: and I think I may with confidence pronounce; there is but one circumstance attending the contract, that can exempt it from illegality. The circumstance I mean, is risk. An Annuity is a loan of money for  
" life.

"life. Shape it, as you please, and call it what you will, it is really and truly that."

PART II.  
CHAP. II.

Examination  
of this opi-  
nion.

It will have appeared, I presume, from the cases I have already quoted, that a *bonâ fide* Annuity is no loan in the opinion of our courts. It wants in fact the essential requisite of every loan, which is the return of the thing borrowed: and differs formally from a loan by this very circumstance, that the Principal is absolutely put in hazard and sunk from the person, who advances it. But in as much, as such sales of Annuities may be used for the corrupt purpose of disguising usurious loans, even when the Principal is really hazarded, so may it be argued, that although a real *bonâ fide* Annuity be granted, and that there be no fraud or deceit between the contracting parties to convert the sale into a disguised loan and bring it under the statute of Usury, yet if the Principal advanced be at all events secured to the lender, and he in the mean time receive above twelve per cent upon it, it may be immaterial, whether such Principal be refunded by the borrower or by any other person. If we argue from analogy and principle, it will be readily admitted, that if a person by accommodating a distressed man with a sum of money shall be permitted to make above twelve per cent of it without exposing it to any hazard, the statutes, which

T

prohibit



PART II.  
CHAP. II.

Whether  
Insurances  
render An-  
nuities, usu-  
rious.

prohibit and punish the taking of more than five per cent upon other modes of accommodation or loan are but frivolous and delusive.

In *Lawley v. Hooper* Lord Hardwicke had fully under consideration this species of insurance from hazard, when he said: "Another objection, which has been made, was that a man must be out of his senses to lend his money upon Annuities for a life, which may drop the next day, and speaking abstractedly, and merely on the nature of Annuities for life, there seems to be weight in this objection: but every body knows, that this casualty of losing the Principal is secured by insuring the life, upon which the Annuity depends. But it is said, that every life cannot be insured: indeed the Insurance Office will require different terms according to the life: but still they may be insured." It is moreover well known from experience, that where the life is not insurable, the dealers in Annuities will never purchase, but upon the most exorbitant terms. Nor can the infrequency of such purchases or accommodations, in which the life is not insurable take the ordinary cases of Annuities sold for the life of the seller out of the spirit and principle of our laws against Usury, which are emphatically grounded in the protection of the necessitous against the advantages, which

which may be taken of their distress. So many Annuities however have been established by the courts, in which such insurances have been known to subsist, that we must conclude, that this circumstance does not of itself render the transaction usurious, or convert it into a loan, if it were not so otherwise.

Nothing more, I apprehend, needs be said upon the nature and quality of these Life Annuities being usurious. It would however be orderly here to make some observations upon the contracts for such Annuities, and how far they may be considered distinct from the securities: but as much of this question depends upon the interpretation of the Annuity Act, I shall reserve that point for the following Chapters, which will be a comment upon the Act; and shall in the mean while proceed to consider the validity of these Annuities with reference to their consideration.

Of the consideration of Annuities.

Under this head properly falls the adequacy of the consideration <sup>1</sup> of which I have but to say

<sup>1</sup> Nothing can be more satisfactory upon this point than what Mr. Fonblanque has said in one of his very judicious and learned notes on the Treatise of Equity (1 Vol. 236, 7, 8.)

"As to the practice of purchasing Annuities for lives at a certain price or premium instead of advancing the same sum as an ordinary loan it arises usually from the inability of the borrower to give the lender a permanent security for

PART II.  
CHAP. II.

Of the adequacy of the consideration.

say generally, that as an Annuity for the life of the grantor is of itself an Interest or right as saleable, as any other sort of estate or beneficial interest real or personal; so is it equally within the reach and control of all those tutelary maxims and rules of equity, by which all other contracts and bargains are protected from deceit imposition and fraud. If the courts have been pointedly severe in reflecting upon the mischiefs and evils of the pernicious traffic of Life Annuities, it arises not from the nature of the thing,

“ the return of the money borrowed at any one period of  
 “ time. He therefore stipulates to repay annually, during his  
 “ life some part of the money borrowed together with legal Interest for so much of the Principal as annually remains unpaid as an additional compensation for the extraordinary  
 “ hazard run of losing that Principal by the contingency of  
 “ the borrower’s death; all which considerations being calculated and blended together will constitute the just proportion or quantum of the Annuity granted.”—“ The real  
 “ value of that contingency,” says Sir William Blackstone,  
 “ must depend on the age, constitution, situation and conduct  
 “ of the borrower; and therefore the price of such Annuities  
 “ cannot, without the utmost difficulty, be reduced to any  
 “ general rules: so that if by the terms of the contract the  
 “ lender’s Principal is *bonâ fide*, and not colourably put in  
 “ jeopardy, no inequality of price will make it an usurious  
 “ bargain; though under some circumstances of imposition,  
 “ it may be relieved against in equity.” 2 Bla. Com. 461. In  
 the case of *Heathcote v. Paignon*, 2 Bro. Rep. Ch. 175, Lord  
 Thurlow



thing, but from the prevalence of it's abuse, as the purchase of an Annuity for the life of the seller is at present the most ordinary method, by which the distressed and needy borrower is oppressed and aggrieved by the covetous and griping lender, under all the spirit and mischief of Usury, though perhaps without the letter of the laws, that punish it. This I shall endea-

Thurlow seems to have followed this distinction in his observation that "if mere inadequacy is the ground of rescinding the contract for an Annuity, it should seem, that it was scarcely sufficient; but there is a difference between that and evidence arising from inadequacy. If there be such inadequacy as to shew that the person did not understand the bargain he made or was so oppressed that he was glad to make it, knowing its inadequacy, it would shew a command over him, which amounts to a fraud." It is scarcely possible to enumerate all the circumstances, which may induce a court of equity to rescind such contracts. The cases however and learning upon the subject are brought together in the cases of *Heathcote v. Paignon* and *Chesterfield v. Jarsen* and furnish at least this rule—that if there be any fraud either direct or constructive, or the parties appear to be within the range of that policy, which gives to particular descriptions of persons an extraordinary claim to protection, courts of equity will interpose and give relief. But if the transaction is not chargeable with fraud or imposition, and the parties to it are *sui juris* and not in a situation, which gives them peculiar claims to protection, courts of equity in cases of Annuities, will as do courts of law, leave money to find its own value; no Act of Parliament having prescribed any regulation as to the price of Annuities.

PART II.  
CHAP. II.

vour to elucidate more fully in the next Chapter, when I shall take a summary view of the proceedings of parliament upon this subject.

It is obvious from what has been already said, that inequality of price bears no otherwise upon the purchase of Annuities, than upon the purchase of any other estate or Interest whatever. But as it is not my intention to enter into the validity of contracts in general, where there may have been inadequacy of consideration, I shall content myself with noticing some general doctrine upon the subject.

Of the inadequacy of the consideration.

<sup>1</sup> “ *Inadequacy of price*, abstracted from all “ other considerations seems of itself (upon revision of the best authorities) to furnish no “ ground, on which a court of equity can set “ aside or rather relieve a party to a contract.” It was however formerly thought otherwise by the very profound author of the *Treatise of Equity* <sup>2</sup> “ In all contracts purely chargeable, if “ there appear to be an inequality, although “ there was no deceit, and all the faults of the “ thing were exposed, yet if the damage be con-

<sup>1</sup> Powell on Contracts, 2 vol. 152. cites 1 Will. 230. 2 Vez. 518. Bro. Rep. C. Anon. 1787, fo. 175. *Griffith v. Spratley*. Ibidem 179. 1 Vez. 155. *Wood v. Fenwick*. Preced. Chan. 206. S. C. 1 Eq. Ca. Abr. 170. 2. *Nichols v. Gould*. 2 Vez. 422.

<sup>2</sup> L. 1. Cap. xi. Sect. ix.

“ fiderable,

“ fiderable, the bargain ought to be made void. PART II.  
 “ And this estimate of the damage is to be CHAP. II.  
 “ taken either from the exorbitance of the price  
 “ or the poverty of the party injured, for no man  
 “ fhould be a gainer by another’s lofs. But a  
 “ fmall damage even in the law of nature, is  
 “ not fufficient to break off a bargain for the  
 “ benefit of traffic and the eafe of the magi-  
 “ ftrate.”<sup>1</sup>

I cannot

<sup>1</sup> I cannot gratify my reader more, than by giving him Mr. Fonblanque’s note upon this fection, viz. “ I have not been  
 “ able to find a fingle cafe, in which it has been held, that  
 “ mere inadequacy of price is a ground for the court to an-  
 “ nul an agreement, though executory ; if the fame appear to  
 “ have been fairly entered into, and underftood by the par-  
 “ ties, and capable of being fpecifically performed ; ftill lefs  
 “ does it appear to have been confidered as a ground for re-  
 “ fcinding an agreement actually executed.” In the cafe of  
*Keen v. Stukely*, Gilb. Rep. 155, the court exprefsly held,  
 that the exorbitancy of the price was not fufficient to dif-  
 charge the defendant from the performance of his contract ;  
 the decree for a fpecific performance was, indeed, afterwards  
 reverfed, but not upon the ground of inadequacy of confide-  
 ration but becaufe the plaintiff had not made out his title by  
 the time ftipulated, 2 Bro. P. C. 396. In *Willis v. Tomegan*,  
 2 Atk. 251, Lord Hardwicke held, that “ it is not fufficient  
 “ to fet afide an agreement in equity, to fuggelt weaknefs  
 “ and indifcretion in one of the parties, who has engaged in  
 “ it ; for fuppofting it to be in fact a very hard and uncon-  
 “ fcionable bargain, if a perfon will enter into it with his eyes  
 “ open, equity will not relieve him upon this footing unlefs  
 “ he can fhew fraud.” See alfo *Floyer v. Sherrard*, Ambler’s



## PART II.

## CHAP. II.

Case upon  
inadequacy  
of price.

*Heathcote  
v. Paignon.*

I cannot forbear mentioning again the case of *Heathcote v. Paignon*<sup>1</sup>, as emphatically affecting the subject of our present consideration. Heathcote at the age of thirty fold an Annuity of 5*l.* for his own life for 200*l.*, or four years purchase: and after his death, the grantor of the Annuity filed a bill against Mary Paignon the widow to be permitted to redeem. Lord Kenyon, then Master of the Rolls, before whom the cause came on to be heard, referred it to the Master to enquire and state to the Court the value and the market price of the Annuity at

Rep. p. 18. In *Gwynne v. Heaton*, 1 Bro. Ch. Rep. 9. Lord Thurlow observes that “to set aside a conveyance there must be an inequality so strong, gross, and manifest, that it must be impossible to state it to a man of common sense, without producing an exclamation at the inequality of it.” And in *Spratley v. Griffith*, 2 Brown’s Chan. Rep. 179, in a note to *Heathcote v. Paignon*, the Chief Baron assigned as a ground for the decree that there was “no case, in which mere inadequacy of price independent of other circumstances had been held sufficient to set aside a contract.” See also *Stephens v. Bateman*, 1 Bro. Ch. Rep. 22. *Henley v. Aclon*, 2 Bro. Ch. Rep. 17. In addition to this concurrence of authority a very strong argument in support of the rule may be drawn from those cases, in which losing bargains have been actually established and decreed, *City of London v. Richmond et al.* 2 Vern. 423. *Wood v. Fenwick*, 1 Eq. Ca. Abr. 170. *Nichols v. Gould*, 2 Vez. 422, and the case referred to by Lord Chancellor Thurlow, in *Mortimer v. Capper*, 1 Bro. Ch. Rep. 158. See also Domat’s Civil Law, c. ii. tit. 2. s. 3.

<sup>2</sup> 2 Br. Ch. Ca. 167.



the

the time of the purchase. The Master's report stated, that by Mr. Bland's calculation the value of the Annuity for Mr. Heathcote's life at the age of thirty, was eleven years and six-tenths of a year's purchase: and that the market price was six years' purchase. When the cause came on again to be heard, his Honour declared, that the late John Paignon taking advantage of the distress of the plaintiff Heathcote had purchased the Annuity under the market price, and therefore decreed the purchase to be set aside. And the decree upon appeal was affirmed by Lord Thurlow.

Two observations are to be made upon what his Lordship declared on this occasion, after the case had been most elaborately argued on both sides. 1°, How much he inclined to look upon this transaction as a loan. "Where there has been a loan, and the terms have been such, as to shew the distress of the party, the Court has given relief: here was twenty-three per cent clear profit with a certainty of the Principal being secure." 2°, How tender he was in declaring, that the bargain should be rescinded for mere inadequacy of price. "Now if I declare, that having given but two-fifths of the value for the Annuity, secured by the insurance, was taking advantage of his distress, that will be a proper preface to my affirming

Lord Thurlow's opinion upon the case.

## PART II.

## CHAP. II.

Real value  
and market  
price differ.

“firming this decree, but that will decrease the  
“future price of Annuities. I cannot say, that  
“being at all under the greatest price, that  
“could be obtained, would be a sufficient rea-  
“son for rescinding the transaction.” In the  
next Chapter I shall have occasion to speak of  
and refer to more satisfactory documents con-  
cerning the real value of these Annuities for  
the lives of the grantors. I shall here barely  
remark, that the value and the market price vary  
widely from each other: that the market price  
is fixed and regulated by the dealers, whose in-  
terest it is to keep it as low as possible: that the  
value cannot like other commodities vary from  
fashion accident scarcity or plenty, but merely  
from the price of bullion. And for this reason did  
Lord Hardwicke say in *Lawley v. Hooper*; “I  
“believe in my conscience, that the difference,  
“which is now made between the value of An-  
“nuities for one’s own life and that of another,  
“has been entirely caused by the dealers in  
“these Annuities.”

Where  
equity or  
law will re-  
lieve.

It appears upon the whole consideration of  
this matter, that bare inadequacy of price is not  
a sufficient ground either at law or in equity to  
rescind a contract or bargain: but then this sup-  
position excludes from the transaction every cir-  
cumstance of deceit, fraud, imposition, fear, un-  
due influence, hardship, distress, oppression, ex-  
tortion



tortion or necessity : and under this exclusion we may indeed suppose a possible case, but rarely meet with an actual case of gross inadequacy of price. It would exceed the proposed limits of this treatise to enter into the various instances in

For instances, in which equity has relieved, where there has been inadequacy of price, vid. *Clarkson v. Hanway*, 2 P. Will. 203. *Coles v. Gibbons*, 3 P. Will. 290. *Fox v. Macreth*, 2 Bro. Ch. Ca. 167. *Ardglafs v. Muschamp*, 1 Vern. 75. and 239. *Berney v. Pitt*, 2 Vern. 14. *Tawistleton v. Griffiths*, 1 P. Will. 310. *Crow v. Ballard*, 3 Bro. Ch. Ca. 117. and 1 Vez. jun. 215. *Gwynne v. Heaton*, 1 Bro. Ch. Ca. 1.—It will not be here improper to state, that Lord Hardwicke in the great case of *Chesterfield v. Jansen* (2 Vez. 155.) laid down as leading rules in matters of this nature four different species of fraud, viz. “ 1o. Fraud, which is *dolus malus* may be actual arising “ from facts and circumstances of imposition, which is the “ plainest case. 2o. It may be apparent from the intrinsic nature and subject of the bargain itself ; such as no man in his “ senses and not under delusion would make on the one hand, “ and as no honest and fair man would accept on the other ; “ which are unequitable and unconscionable bargains ; and “ of such even the common law has taken notice ; for which “ if it would not look a little ludicrous might be cited, 1 Lev. 3, “ *James v. Morgan*. A 3d kind of fraud is which may “ be presumed from the circumstances and condition of the “ parties contracting, and this goes further than the rule of “ law ; which is that it must be proved, not presumed : but it “ is wisely established in this Court to prevent taking surreptitious advantage of the weakness or necessity of another ; “ which knowingly to do is equally against conscience as “ to take advantage of his ignorance : a person is equally unable to judge for himself in one as the other. A 4th kind “ of

PART II.  
CHAP. II.

in which equity and even common law will relieve in hard unconscionable or catching bargains. For so was it said by parliament (6 Ric. 2.)  
 “ If any man be grieved by Usurie upon account, trespass, extortion, deceit, or such like means, the laws and customs of the realm shall punish the same.”

Various considerations.

It would be almost useless to observe, as an Annuity for the life of the grantor is of its own nature an Interest or estate as valid and effectual in law as any other, that it requires no other consideration for its being granted than any other species of estate. It may therefore be granted in consideration of marriage, of blood, for past or future services, *pro concilio impenso* or

“ of fraud may be collected or inferred in the consideration of this Court from the nature and circumstances of the transaction, as being an imposition and deceit on the other persons not parties to the fraudulent agreement. It may sound odd that an agreement may be infected by being a deceit on others, not parties : but such there are, and against such there has been relief. Of this kind have been marriage brocade contracts : neither of the parties herein being deceived : but they tend necessarily to the deceit on one party to the marriage, or of the parent or of the friend. So in a clandestine, private, agreement to return part of the portion of the wife or provision stipulated for the husband to the parent or guardian. In most of these cases it is done with their eyes open and knowing what they do : but if there is fraud therein, the Court holds it infected thereby, and relieves.”

*impendende,*

*impedendo*, or even voluntarily. But where the consideration is *pro causâ turpi*, &c. there equity will interfere as in *Harrington v. Du Chattel*<sup>1</sup>. The late Lord Rochford being groom of the stole to his Majesty and consequently recommending pages of the presence, undertook to recommend the plaintiff's executor upon a vacancy, on condition, that he should grant two Annuities one of 100l. to St. Ferrol his Lordship's travelling tutor and one of 40l. to another person. An action being brought upon the Annuity Bond, the plaintiff filed his bill for an injunction, which was accordingly granted upon the policy of the law, although the office were not within the 5th and 6th of Edward VI. And the chancellor Lord Thurlow doubted, whether it might not have been brought upon the record at law by a plea, and made a defence there to the action, but thought that not a sufficient reason to prevent his interposition, the court of law never having determined, that it could be so brought there as a defence. His Lordship treated it as a matter of public policy of the law, and similar to marriage brocage bonds, where though the parties are private persons, the practice is publicly detrimental. So Lord Hardwicke had said in *Cole v. Gibson*<sup>2</sup>. "This court has been extremely jea-

PART II.  
CHAP. II.

*Pro causâ  
turpi.* Bad.

*Harrington  
v. Du Chat-  
tel.*

<sup>1</sup> 1 Bro. C. C. 125.

<sup>2</sup> 1 Vez. 506.



PART II.  
CHAP. II.

Policy of  
setting aside  
marriage  
brocage  
bonds.

“ lous of any contract of this kind made with a  
“ guardian or servant, especially with a servant;  
“ in respect of the marriage of persons, over  
“ whom they have an influence; and by rules  
“ established, not regarding whether the match is  
“ proper or no, if brought about by a *marriage*  
“ *brocage* contract sets it aside; not for the sake  
“ of the particular instance or the person, but of  
“ the public.”

I must reserve what further observations arise upon the consideration of Annuities to the following Chapters, as they will be produced by or connected with the Annuity Act. I shall therefore now proceed to consider the powers exercised by the courts of law and equity in setting aside these Annuities. Few indeed will be the instances, that I can with propriety at present examine, as most of the cases, upon which Annuities have been set aside have been determined upon the statute.

Annuities  
for lives of  
grantors ge-  
nerally se-  
cured on life  
estates.

It is obvious from the nature of life estates or interests, that these Annuities for the lives of the grantors are generally secured upon them: for few Annuities are granted upon mere personal securities: and of these life estates by far the greater part consists of the pay salaries or appointments of the clergy and officers civil naval and military. Of the utmost importance then will it be to the public, that the validity of Annuities

nuities secured upon this species of income should be fully and fairly canvassed <sup>1</sup>.

It seems now to be finally settled, that wherever an illegal assignment is made for securing an Annuity, the courts will upon application for that purpose vacate the Annuity. The principles, upon which the courts have very recently decided officers' pay and half pay to be neither

PART II.  
CHAP. II.

Whether  
the pay and  
half pay of  
officers as-  
signable.

<sup>1</sup> Mr. Erskine has spoken very feelingly of the mischiefs arising from officers of the army and navy being reduced to the necessity of raising money, by this destructive process, (Ref. 28. 29.) "Nor is it the insatuated gamester or careless spendthrift, that are alone or chiefly to be lamented; the most useful and laborious servants of the public are rendered miserable for life by this inhuman traffic; the officers of the army and navy led into inevitable expences beyond the annual income of their commissions, incurred for the public defence, are snatched up by these harpies, and their subsistence shared among Jews or worse Christians in the luxuries of London while they are suffering hunger and cold, and worse than death for their country; five years purchase is the most they receive from the additional hazard of military life, the conscience of the Jew is at rest from this calculation who eats his pork in a corner, while the gallant soldier is starving.

"Surely if parliament cannot raise their pay, or prohibit this aggravation of poverty, it might establish a fund where subalterns or others at the recommendation of their superiors, might borrow small sums rendered necessary by emergencies of duty, to be refunded by a small stoppage on their pay, which at the same time that government would be indemnified would not be felt by the officer."

PART II.  
CHAP. II.

assignable in law nor equity are of such general application and of such important consequence that we cannot be too particular in examining their nature and effects. It is highly to the honour of the respectable characters, that now fill the benches, that so humane and just a determination should have at length settled this important point: yet as some decisions and sayings of very great men appear at variance with these late decisions, it will be the more requisite to trace the principles and grounds of their determinations up to their origin: more especially, as every reason, why the pay and half pay of an officer is not assignable, applies with double force to benefices livings and other clerical stipends: and at this moment many are the unfortunate cases, in which well-deserving clergymen clogged with these deadly weights are rendered useless to their calling, the disdain of the wealthy, the contempt of their poor parishioners, and utterly disabled to keep themselves and families in decent independence or respectability, for which exclusive purposes the living benefice or stipend was settled upon them.

Oliver v.  
Enfonne.

The first case, that I find really pointed and relevant to this subject is that of *Oliver v. Enfonne*<sup>1</sup> where an Annuity had been granted

<sup>1</sup> 1 Dyer, 6 Hen. VIII.



PART II.  
CHAP. II.

What's not  
forfeitable is  
not assigna-  
ble.

*pro concilio impenso et impendendo* to be issuing out of a manor, of which a stranger was seised. Ensonne the defendant was attainted of high treason, and upon demurrer it was adjudged, that the Annuity (or rent) "was not forfeited to the King because *it was incident to the cause, for which it was given* (namely the trust and confidence, which the grantor had in him for his advice,) which he could not grant to another person, and which for the same reason he could not forfeit. As if a man be created a Duke, and for the maintenance of his dignity the King grants an Annuity of 20l. to him, *he cannot grant this to another, because it is incident to his dignity.*"<sup>1</sup>

Against or at least without reference or attention to these principles so unequivocally laid down in *Dyer, Plowden and Cooke*, there have been decided many cases, in which assignments of officers' pay and half-pay have been allowed at least in equity.<sup>2</sup> In *Crouch v. Martin*<sup>3</sup> it

Cases in  
which of-  
ficers' pay  
and half-pay  
assigned in  
equity.

<sup>1</sup> Vid. also the cases of Sir Henry Neville and of Sir Thomas Wroth, but particularly the former in *Plowden* 377 and 452. Also 2 Inst. 9. where the King formerly granted lands annuities &c. *ad sustinendum nomen et onus* of the peerage. *Dyer* 7.

<sup>2</sup> The cases in favour of such assignments in equity are all brought together in the argument for the plaintiff in *Stone v. Litterdale and others* in the Exchequer. Hil. 35. G. III. 2 Anst. 533.

<sup>3</sup> 2 Vern. 595. Mich. 1707.

PART II.  
CHAP. II.

was expressly said, that "*Seamen's wages are* assignable, and the assignment specifically binds the wages, and in truth the advancing the 100l. on the credit of the wages is, as it were paying the wages beforehand. It is a chose en action, although the service not then done, and a chose en action is assignable in equity upon a consideration paid." The next case was that of *Grainger v. Wyvill* before Lord King 1728<sup>1</sup>, where his Lordship granted an application to sequester the half-pay of an officer in the hands of the treasurer of the navy.

Lord Hardwicke admitted of such assignments.

In a case before Lord Hardwicke *ex parte Butler and Purnell the assignees of Edward Richardson a bankrupt*<sup>2</sup>, where the question being, whether the office of under-marshal of the city was assignable under the bankrupt laws, his Lordship held, that it was assignable: and he added, that "if an officer in the army should become a bankrupt, he had no doubt, but that he had a power to lay his hands upon his pay for the benefit of his creditors." This seems to have been a rooted opinion of Lord Hardwicke. For it appears by the Registry Book in Chancery (though reported by none<sup>3</sup>) in *Gomez v. Graham*, that Gomez a money-lender had filed a

Gomez v.  
Graham.

<sup>1</sup> From a Manuscript in the possession of Mr. Hargrave.

<sup>2</sup> 1 Atk. 210.

<sup>3</sup> 2 Black. 1138.

bill against *Graham* Fort Major and *Phillips* governor of Annapolis Royal in Nova Scotia and *Gould* agent to the garrison, and the defendant not appearing, it was ordered, that the defendants *Phillips* and *Gould* should pay to the plaintiff *Gomez* what was due to the defendant *Graham* for his salary as Fort Major, at and from the time they had notice of his having assigned such salary to the plaintiff by deed. And it appeared upon the rehearing of the cause, that the assignment was of *Graham's* growing pay, in consideration of 225*l.* to secure an Annuity of 30*l.* for *Graham's* life, with power of redemption at the end of two years or after. *Gould* the agent by his answer insisted, that he was accountable to the officer only and was not to regard his assignments. Lord Hardwicke reversed the decree at the Rolls, and directed the account to be taken from the time of *Gould's* putting in his answer, and decreed that *Gould* should thereout pay the arrears of the Annuity and costs, and continue to pay the quarterly payments thereof out of the pay of the said *Graham*, so long as *Graham* shall be entitled to such pay and the said Annuity shall continue. *Gould* to have his costs out of *Graham's* pay after payment of the plaintiff's arrears.

In *Stuart v. Tucker* <sup>1</sup> the half-pay of an offi-

<sup>1</sup> 2 Black. Rep. 1137.



PART II.  
CHAP. II.Half-pay  
assigned.  
Stuart v.  
Tucker.

cer had been assigned for securing an Annuity granted by that officer for his own life, with a covenant to assign also any larger salary he might afterwards obtain for the same purpose. The defendant, who was paymaster in consequence of notice of the deed, by which the half-pay was assigned, had for some years paid the same to the executors of the assignee. The plaintiff was afterwards discharged under the Insolvent Debtors' Act; and then he gave notice to the defendant and insisted upon having his half-pay made to himself; but the defendant would pay it to no other, than the first assignee. And the question was, whether the plaintiff was precluded by the deed of assignment from recovering in this action the half pay, for which it was brought? *Glynn* for the plaintiff made a most solid argument, which the Reporter has thus compressed: "Neither whole nor half-pay  
" is assignable at law. It is a casual profit and  
" the gift of the crown, which is not enabled to  
" grant it, otherwise than by an annual vote in  
" parliament. It is given on public grounds,  
" for the honour and support of the officer,  
" and does not pass by the usual operations of  
" law. It is never affected by commissions of  
" bankrupt, insolvent acts &c.; nor can it be  
" be taken in execution." For the defendant it was urged, that the point had been already

settled

settled in *Gomez v. Graham*: this however, *Glynn* observed, was a case in equity. *De Grey Ch. J.* drew a difference between whole and half pay: the one being *pro servitio impendendo*, the other *pro servitio impenso*: he observed, that it was settled in *Gomez v. Graham*, that although the pay, as a *chose en action* be not assignable by law; yet that it is assignable in equity. The plaintiff having for a valuable consideration assigned over this half-pay, was not entitled by this equitable action to recover it to his own use, and he was accordingly nonsuited.

The case of *Nates v. Elliott* cited in *Stuart v. Tucker* was ruled in the same manner by Lord Mansfield at the Sittings in 1770. And in 1773 Lord Bathurst decided, in *Spencer v. Cox and Drummond*<sup>1</sup>, that an army agent was bounden in consequence of notice of an officer's having assigned over his pay for securing an Annuity, to pay it to such assignee. In all these cases, numerous as they are, the Court never seems to have considered the real and true ground of the pay not being assignable, which are the principles laid down in our earlier reporters and are too deeply founded in law to be shaken or over-set by any subsequent decisions. We must now consider the grounds, upon which the courts

PART II.  
CHAP. II.

De Grey's  
difference  
between  
whole and  
half pay ad-  
mits the as-  
signment of  
the latter.

<sup>1</sup> Cited in 2 Anst. 335.

PART II.  
CHAP. II.

Case against  
the assign-  
ment of half  
pay.  
*Flarty v.*  
*Odum.*

have over-ruled these later distinctions and determinations.

In the case of *Flarty v. Odum*<sup>1</sup> the question was, whether the half-pay of an officer of a reduced regiment should be included in his schedule delivered in under the Lords' Act<sup>2</sup>. Lord Kenyon was clearly of opinion that this half-pay could not be legally assigned by the defendant, and consequently, that the creditors were not entitled to an assignment of it for their benefit. Emoluments of this sort are granted for the dignity of the State, and for the decent support of those persons, who are engaged in the service of it. And although such assignments had frequently been made in fact, they could not be supported in law. It might, added his Lordship, be as well contended, that the salaries of the Judges, which are granted to support the dignity of the State and the administration of justice may be assigned. *Buller J.* took a very important distinction. "If the question had been, whether  
" or not the pay, which was actually due might  
" be assigned, I should have thought it, like any  
" other existing debt assignable: but that does  
" not extend to *future accruing payments*."<sup>3</sup>

<sup>1</sup> 3 Term. Rep. 681.

<sup>2</sup> 32 Geo. II. c. 28. sect. 13.

<sup>3</sup> The same point was determined about a year and a half before this by Lord Thurlow in the case of Captain Kennedy a bankrupt.



This point was very solemnly confirmed in *Litterdale v. the Duke of Montrose and Lord Mulgrave Paymasters-General of the Army* <sup>1</sup> in which the specific case of an assignment of the half-pay recurred. *Erskine* observed particularly, that the case of *Flarty v. Odium* decided the present, and that it was determined by the Court on great deliberation and after having attentively considered the case of *Stuart v. Tucker*, and all the other cases on the subject. And the Court said, that on the best consideration, which they had been able to give to this question, they saw no reason to retract the opinion, which they had delivered in *Flarty v. Odium*.

PART II.  
CHAP. II.

*Litterdale v.*  
*Duke of*  
*Montrose,*  
&c

The question must certainly be now set to rest by the late determination in *Stone v. Litterdale and others*, which was an attempt to prove the assignment, which had been declared null in law to be valid in equity. And here as I before observed all the cases upon the subject were urged and considered by the Court. And before the Chief Baron would deliver the opinion of the Court, he declared that as the cases were contradictory, he would look into them. In giving judgment he said, that the case in *Dyer* and the decisions in both the other courts in questions similar to the present fix the true principles of

<sup>1</sup> 4 Term. Rep. 252.

PART II.  
CHAP. II.

Neither  
whole nor  
half-pay  
now can be  
assigned.

law upon the subject, and decide the present case.

It is obvious, that the three cases of *Flarty v. Odium*, *Litterdale v. Duke of Montrose*, and *Stone v. Litterdale and others*, have now irrevocably established this general rule, that wherever an Annuity pay salary or stipend is granted by the public for a reason of public policy no transfer or assignment of the growing payments can be validly made either in law or in equity. The pay is annexed to the person, and as Dyer said, incident to the cause, for which it was granted and when aliened is diverted from the purpose, for which it was intended and solely given. We have seen the case decided in military pay and half-pay. Every naval appointment falls within the reason and spirit of the principles. Lord Kenyon has instanced the salaries of the Judges, and by parity of reasoning most civil appointments and salaries, particularly where confidence is annexed, are equally incapable of being charged transferred or aliened.

Stronger  
reasons for  
benefices  
not being af-  
signable.

Every reason of law equity and policy militates with accumulative force against the alienation of the livings stipends or benefices of the clergy. The State, which judges it proper to provide for those, who are destined to minister the gospel, appropriates a certain portion of the public property or revenue to their maintenance,

tenance, that they may be thereby kept out of distress penury and want, and enabled to vacate without interruption to the duties of their calling, and particularly that their flocks may be eased of the troublesome and inconvenient charge of contributing *pro ratâ* to that gospel allowance or maintenance, to which the Scriptures assure us the ministers of the altar are entitled. The persons, to whom these salaries or stipends are appropriated are by law, usage and reason excluded from the ordinary resources of procuring a livelyhood for themselves and family: their pittance therefore ought to be sacred and unalienable from the purpose, to which it is appropriated. The incumbent has the usufructuary enjoyment of it in consideration of the duties he is thereby bounden to perform: *beneficium propter officium*. He can upon no account, or upon no pretext whatever deprive the incumbent even for one year of that resource, which the State has annexed to the office. It would be an injustice to the public at large and more especially to the inhabitants of the particular parish or district, who are by such appropriation exempted from the charge of providing for their minister, and consequently by such alienation of the fund, they would either be deprived of the services of the incumbent, or be under the necessity of contributing to his maintenance.

Upon



PART II.  
CHAP. II.Constitution  
of Langton  
against the  
alienation of  
church be-  
nefices.Effects of  
the Canon  
Law.

Upon such reasons and principles do I conceive the constitution of Archbishop Langton to have been framed<sup>1</sup>, by which it was provided, that no abbot prior archdeacon, dean or other person having any parsonage or dignity, nor any inferior clerk should presume to sell, mortgage, infeoff *de novo*, or in any other manner alienate the possessions or revenues of the dignity or church committed to them to their kinsfolks or to any other person whomsoever. Now this being an ancient and lawful canon, is to be looked upon as a part of the common law of the land, according to the very learned and constitutional decision of Lord Hardwicke in *Middleton and Uxor v. Croft*<sup>2</sup> upon the nature and binding quality of the Canon Law, by which it was settled, that the canons of 1603 not having been confirmed by parliament do not bind the laity. In this case, it is said “that the *received canons bind the laity*: and this appears by our Statute “ Law, 25 Hen. VIII, c. 21 in the preamble, and “ 35 Hen. VIII, c. 16, which continues the force “ of canons accustomed and used.” Lord Hardwicke in this case also said, that *Vaughan* was certainly right in saying, “that a lawful canon is “ the law of the kingdom as well as an act of par-

<sup>1</sup> Lind. 149. Vid. also Burn's Ecclesiastical Law, 1 Vol. tit. *Glebe Lands*.

<sup>2</sup> 1 St. 1056,

“liament;”

“*liament* ;” and in the very next paragraph he speaks of a canon as *warranted by act of parliament*<sup>1</sup>. Whether therefore this constitution of Archbishop Langton be an old canon receiving its efficacy and vigor immediately from the common law, which gave it *custom and usage*, or from the 35 of Hen. VIII, which continues the force of canons accustomed and used, I think myself thereby clearly warranted in asserting, that the stipend salary or living of a clergyman cannot be validly assigned or transferred even by common law.

PART II.  
CHAP. II.

In confirmation of this opinion, the statute of 13 Eliz.

<sup>1</sup> It appears to me that Lord Hardwicke has not exactly and faithfully quoted the true sense of Lord Vaughan. He speaks not of a *canon* generally being lawful, *because warranted by parliament*, as if such only were lawful. But he evidently imports, that there may be lawful canons, which are not expressly warranted by parliament, although the particular canon, of which he spoke were so. It is in the case of *Hill v. Good* upon the lawfulness of a marriage within the Levitical degrees. His own words will best explain his own sense. “If  
“by a lawful canon a marriage is declared to be against God’s  
“law, we must admit it to be so: for a lawful canon is the  
“law of the kingdom, as well as an act of parliament: and  
“whatever is the law of the kingdom is as much the law, as  
“any thing else is so; for what is law, doth not *suscipere magis aut minus*. But by a *lawful canon of this kingdom which is*  
“*enough*, and not only so, but by a canon warranted by act of  
“parliament, the marriage in question is declared to be pro-  
“hibited by God’s law, therefore we must submit it to  
“be so.”

the

PART II.  
CHAP. II.

the 13th of Elizabeth (c. xx.) is explicit and conclusive.

The short preamble of the Act is peculiarly pointed : “ That the livings appointed for ecclesiastical ministers may not by corrupt and indirect dealings be *transferred to other uses* : Be it enacted (amongst other things) that all chargings of such benefices with cure hereafter with any pension, or with any profit out of the same to be yielded or taken hereafter to be made (other than rents to be reserved upon leases hereafter to be made according to the meaning of this Act), *shall be utterly void*.” A law so glaringly explicit wants neither comment nor explanation.

A general law needs not to be pleaded.

It appears from experimental observation, that this law is either little known or little attended to. In *Hunt v. Singleton*<sup>1</sup>, which was a case upon the invalidity of a church lease under the 13th of Elizabeth, it was said, that “ the statute here needs not to be found by the verdict, because it is a *general law*.” As a general law therefore, of which the Judges are bounden to take notice, it has ever appeared to me singular, that in a case so much agitated and canvassed as that of *Murray v. Hardinge* was, not a hint should have been thrown out by either counsel or court,

<sup>1</sup> Cro. Eliz. 564. Vid. also *Carter v. Claycoles*, 1 Leon. 306.

that

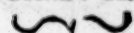


## AND ANNUITIES.

301

that the Annuity granted out of the living of *Grafton Regis* was by the 13th of Elizabeth *utterly void*.

PART II.  
CHAP. II.



It is highly probable, that many officers both upon whole and half pay, and many clergymen, who have long lived in misery from their support and maintenance being transferred to the use of Annuitants, may wish by setting aside their Annuities to emerge out of that abyfs of wretchedness, to which the summer of their life has been devoted. But as it rarely happens, that these Annuities are granted without all the securities, that can be given, a bond and warrant of attorney to confess judgment usually accompany or precede or follow the assignments or charges, which are of themselves illegal and void. It will then be readily admitted, that if the condition of the bond be for the performance of covenants in the deed, which assigns or charges the pay or living with the Annuity, then if the deed itself be void, the bond and warrant of attorney will also be void. But if, as the case more frequently happens, the bond be for the payment of the Annuity, and the deed of assignment or charge be but as a collateral security for better insuring the payment of that Annuity, the question will then be, Are the bond and warrant of attorney in such case void or not?

Miserable  
cases of  
many of-  
ficers and  
clergy men.

Whether  
the bond  
and warrant  
of attorney  
void.

It is of the utmost importance to ascertain the  
rights

PART II.  
CHAP. II.

Case of  
Murray v.  
Hardinge.

rights of the parties under these circumstances. If notwithstanding the nullity of the deed of assignment or charge, the clergyman's bond and warrant of attorney be valid against him, little will it avail him to establish the nullity of the deed; for by the ordinary effects of the bond and judgment entered up, his person his estate and his living will be liable to the arrears and growing payments of the Annuity. This was precisely the case of *Murray v. Hardinge*, where besides the deed charging his living with the Annuity Mr. Hardinge also entered into a bond *conditioned for payment of the said Annuity* or redemption of the same as aforesaid, *with a warrant of attorney to confess judgment thereon*. And the Court without any reference to or notice of the nullity of the deed, made "a rule, that on payment of the arrears then due to Mrs. Murray on the said Annuity, the rest of the money levied (they had levied for the whole consideration of the bond) be returned to the defendant and proceedings to stay till further orders. The plaintiff to be at liberty to apply to the Court from time to time to take out fresh executions, as fresh arrears may accrue."

Are the directions of the Court in *Murray v. Hardinge* compatible with 13 Eliz.

This is a case, in which, abstracting from the question of the nullity of the Annuity, the Court directed and sanctioned the process and remedy of the grantee of the Annuity under a bond and judgment.

judgment. It may also be said, if such bond and warrant of attorney be valid, that upon the judgment entered up a *fieri facias* may be sued out and upon that being returned to the sheriff, writs may issue, under which the profits of the living may be sequestered<sup>1</sup>. We are then to consider the full effect of the statute of Elizabeth, which says that *all chargings of such benefices with any pension or profit out of the same to be yielded or taken shall be utterly void*: but will they be so, if under the bond and judgment, the arrears and growing payments of the Annuity may in any possible case be levied upon the benefice or living, either by sequestration or otherwise?

*Ex confesso* the bond is given for the payment of one and the same Annuity, as is charged upon the living by the deed. Can the Annuity then be *utterly void* by the statute and at the same time remain valid and operative by common law? It certainly is no uncommon thing, that a deed shall be void as to some purposes, and valid as to others: but this must be *sub diverso intuitu*: as covenants have been operative in leases, that were void under this very Act, of 13 Elizabeth: I cannot pretend to say, that every judgment against a beneficed clergyman shall be utterly

Deeds void  
as to some  
and valid as  
to other pur-  
poses.

<sup>1</sup> Burne's Ecclesiastical Law, 2 Vol. 329. cites Watf. 15.

void



PART II.  
CHAP. II.

Every deed  
void that is  
made with  
a view to  
charge the  
living.

void to all intents and purposes, because the 13th of Elizabeth will make it void as to his living: but at the same time it appears clear, that this utter avoidance of every charge upon a benefice with cure affected by the statute, will absolutely and to all intents and purposes render null and void every deed or instrument, which is made with a view to the charging of such living, whether the deed by express and specific words do charge the benefice, or affect it only by its general operation, or by its proximate or remote effects. In such cases, the interpretation of the law will I presume closely attend the equity of the statute, which is for general good, viz. that church livings may not be transferred to other uses. And it is not possible to presume, that a bond and a warrant of attorney given by a beneficed clergyman, whether accompanied or not with a deed charging his benefice or a covenant to charge that or any future benefice, to secure the payment of an Annuity for his own life, should not have been given with a view to charge and affect his present and future living, and therefore *a charging of such benefice with a pension or profit out of the same to be yielded or taken under the statute*; and consequently *utterly void by the same*.

How the  
equity of  
this statute  
to be ex-  
tended.

If we take into consideration the evil, which by this part of the statute was intended to be repressed,

pressed, viz. *the transferring of church livings to other estates*, we shall perceive the most urgent reason for extending the equity of the statute even beyond the letter. The Court would, I doubt not, act in such cases upon the same principles, that actuate their decisions in matters of Usury. They would look to the substance, not to the form of the transaction. Any omission to mention the benefice or living in the bond deed or instrument, by which the Annuity is secured for the life of the incumbent, when in fact it was the real and substantial consideration of the grant, must be looked upon as a mere evasion of the statute and therefore be utterly void. I do not however hazard the assertion so broadly, as to avoid *ipso facto* every deed bond or security from a clergyman, that might otherwise have affected his benefice, were not that particular effect obviated and prevented by the statute. I humbly therefore suggest this distinction between such bonds deeds and instruments, as the statute avoids, and such as it does not avoid, although it may control their operation upon the living or benefice of the incumbent. If then a person not being a clergyman should have entered into an Annuity bond and warrant of attorney to confess a judgment, and that judgment should have been entered up, and afterwards he should take to orders and be inducted to a living, then al-

Difference  
of a bond  
and judg-  
ment before  
and whilst  
in possession  
of a living.

X

though

PART II.  
CHAP. II.

though the judgment might have affected the benefice by subjecting it to sequestration or otherwise, yet the statute would prevent this effect, though it did not avoid the bond: but otherwise would it I conceive be, in case the bond were entered into with a view of securing the Annuity out of the living. A deed expressly charging or affecting the benefice or living with the same Annuity as is secured under the bond and judgment will from it's nature be conclusive evidence, that the Annuity secured under the bond and judgment was intended to be a charging of the benefice therewith, and will consequently be utterly void by the statute as to such benefice.

Benefices  
not assign-  
able by com-  
mon canon  
or statute  
law.

From what has been said concerning the assignments or charges of the benefices salaries or stipends of the clergy it must appear, that besides the general principles of law equity and policy, which render them unalienable in common with the pay and half-pay of military and naval officers and with the Judges salaries and other civil appointments, the *common, statute and canon law* expressly make them unassignable or chargeable either at law or equity<sup>1</sup>.

Prohibitory

<sup>1</sup> Having said so much of the unlawfulness and illegality of aliening or charging ecclesiastical livings or benefices, it may be naturally expected, that I should add something of the process of *sequestration*, which under some circumstances ap-

pears



Prohibitory and restraining laws vary much in their modes of restraint: some prohibit the thing

PART II.  
CHAP. II.

Different effects of prohibitory laws.

appears to militate directly against the principles of the canon statute and common law. In the case of *Walwyn v. Auberry and others*, 2 Mod. 254, and which is reported as anonymous, 1 Mod. 258. Trin. 29 Car. II. C. B. *North*, who was then Chief Justice said: "The Bishop is in the nature of an Ecclesiastical Sheriff. If an action of debt were brought against a clerk and the Sheriff had returned upon a *feri facias*, that the defendant was *clericus beneficiatus non habens laicum sedum*, there issued a *feri facias* to the Bishop, upon which he used to sequester (as they call it) the ecclesiastical possessions of the defendant, but that is not properly a sequestration: for the Ordinary must not return *sequestrari feci*: he must return *feri feci* or *nulla bona*, in like manner as a Sheriff of a county must do. This I have known in experience, that a Bishop has been ordered to amend his return. The reason of this process was, because the possessions of ecclesiastical persons were so distinct from temporal possessions, that they could not be subject to the ordinary process of the temporal law, no more than the possessions of laymen could be subject to their jurisdiction." The like is said by Lord Coke in his comment upon Stat. Westm. 2. 2 Inst. 472.

Now if the Bishop were compellable to sequester the benefice of the incumbent by virtue of the writ, which issued out of a temporal court, and to make a return to it and could be ordered to amend his return, it is evident, that the ecclesiastical possessions and the ordinary with reference to them were under the jurisdiction and control of the temporal court: but although ecclesiastical property be to some purposes taken out of the ordinary process of the common law, still the very exemption proves it to be ultimately subject and liable to that

PART II.  
CHAP. II.

thing to be done and inflict a penalty for doing it : but *factum valet, quod fieri non debuit* : others render

law, which subjected it to different rules and principles, from those, which govern temporal or lay possessions. As this species of sequestration is founded in a judgment of law had against the incumbent the issuing of the *fieri facias* becomes as it were the actual deprivation of the incumbent's benefice, and the diversion of the profits to another purpose, than the law had appropriated them. This judgment must be either voluntary or involuntary against the clergyman. If the first, then a judgment may thus become the mean of his voluntary alienation of the profits of his benefice ; if the second, then will it enable him to effect that by his folly and extravagance, which the law will not permit him to do even for a valuable consideration and with full reflection. It may not be impertinent here to examine the principles of our common law upon the nature of this property and to examine how far the Legislature has stepped in to alter qualify counteract support or confirm them. Godolphin in his *Repertorium Canonicum* (200) adopts as applicable to a benefice with cure by our common law the definition of it made by *Decarenius de Ben. L. ii. c. 4*, "*Res ecclesiastica, quæ sacerdoti vel clerico ob sacrum ministerium utenda in perpetuum concedatur.* (*Res*) because " it is not the ministry itself or the office, but rather the profit " thence arising that is the benefice : (*ecclesiastica*) because " such profit is dedicated to God and his church ; (*sacerdoti*, " &c.) because where a thing ecclesiastical is granted to lay- " men, it is not properly said to be a benefice in this sense ; " (*ob sacrum ministerium*) because as dedicated to God, they " are for the use of such as wait on his altar ; (*utenda*) be- " cause they have rather the usufruct thereof than any fee or " inheritance therein ; (*in perpetuum*) because they are an- " nexed to his church for ever."

I pre-

render the act done voidable only, whilst others declare it absolutely void : some again avoid the contract,

PART II.  
CHAP. II.

I presume neither to justify nor censure the policy of the common law of the country in granting many exemptions and privileges to ecclesiastical persons and possessions : whatever immunities the clergy ever enjoyed, their title was the grant permission or sufferance of the *civil magistrate*, who alone can grant them, and we are now investigating whether a particular share of these be still reserved and saved unto, or withdrawn from the clergy. We learn from Roger Hoveden (Annal. pars ii. fo. 342.) that William the Conqueror in the fourth year of his reign reviewed the ancient laws of the English and Danes and with the help of his barons, governors of provinces and twelve experienced men cut of every shire selected those, which appeared most proper and eligible for the nation ; and it is to be presumed, that the laws *de clericis et possessionibus eorum* were a mere revival and ratification of the old laws of the land, by which neither the persons of clergymen nor their goods could be arrested, molested or made to pay tribute. And by the fourth of these laws *de universis tenentibus de ecclesia*, every such tenant was exempted from pleading out of the spiritual court, *extra curiam ecclesiasticam coactus non placitabit*.

In *Wakwyn v. Auberry* it is assumed that the Sheriff cannot meddle with the profits of the glebe ; but the Bishop doth it by a sequestration to him directed. *Sequestrations* by the Ordinary are certainly of very ancient date ; but I cannot trace the origin of this conversion of the Bishop into a Sheriff to make returns upon writs issuing out of the temporal courts, for the direct and immediate purpose of counteracting and defeating the very foundations of all the immunities and privileges allowed by the law to the persons and estates of the clergy : all of which clearly tend to render the profits of the livings unalienable from the purposes, to which they were



PART II.  
CHAP. II.

contract, and others the securities ; as we have already seen in the statutes against Usury. The

13th

appropriated by the law. In this spirit by the 14th chapter of Magna Charta was it provided, that “no man of the church should be amerced after the quantity of his spiritual benefice but after his lay tenement, and after the quantity of his offence.” And this obviously was, because the amerciamment could not be levied upon his spiritual benefice: strange therefore is it, that this same law should permit a debt of the churchman to be levied for the benefit of a private creditor off that spiritual benefice, which it exempts from an amerciamment, which is a debt of higher nature as being due to the crown or it’s grantee.

The earliest and most authentic writers, that speak of these *sequestrations* are John of Athon Linwood and the other commentators upon the provincial constitutions: the circumstances, under which they state them to be admissible appear almost incompatible with their legality upon a *feri facias* at the suit of a private creditor of the incumbent. In the Gloss upon the Constitution of Archbishop Stratford *de sequestratione possessionis et fructuum* it is said, that regularly speaking all sequestrations are prohibited, *regulariter omnis sequestratio est prohibita.* (p. 106. Oxf. edit.) And upon the before-mentioned Constitution of Archbishop Langton, *de rebus ecclesie non alienandis*, we find (p. 149.) “That prohibition to alienate the possessions or profits of the church strictly speaking, includes the prohibition of every act, particularly that, by which the property is transferred: but speaking more largely he seems to *alienate*, who suffers the thing to be occupied by another, and who loses his right by not making use of it.” In the Constitution of Othobon (Tit. 15. p. 110.) this prohibition to sequestrate is most formally enjoined *Sequestrationes fructuum*

13th of Elizabeth declares all chargings of benefices utterly void. Now in what consists this charging,

PART II.  
CHAP. II.

*tuum et proventum beneficiorum ecclesiasticorum a praelatis fieri penitus prohibemus, quod et leges et canones interdunt, nisi casus speciales emergant, in quibus sequestrationes certæ consuetudines et jura permittunt.* The reasons I find in Linwood for sequestrating, according to these *consuetudines et jura* are; when the living is vacant and whilst it is in controversy; and for the repairs of the houses and chancels, which the incumbent is bounden to keep in repair. All which are emphatically grounded in the original cause and nature of the benefice, which is to enable the Ordinary to provide a proper person to officiate during the vacancy and to keep up the church and buildings in proper repair; the fruits of the living being "in construction of law, as it were tacitly hypothecated by a certain kind of privilege for such indemnity." (God. of Dilapidation 175.)

Burn says in title *Sequestration*, (2 Vol. 329.) "*Sometimes a benefice is kept under sequestration upon the King's writ to the Bishop to satisfy the debts of the incumbent.*" But how differently spoke the commentator upon the last-mentioned constitution of Othobon? *Multò fortius nec ipsa beneficia pro aliquo debito pecuniario possunt subjici interdicto.* The different applications directed by different statutes to be made of the fruits of vacant livings under *sequestration* all afford the strongest argument against their inalienability or transfer to other uses. The further we go back, the more evidence arises against the liability of spiritual benefices to the claims of creditors. We have already shewn several claims, to which they are liable by common law: to these I will add one quotation from 2 Mod. in *Walwyn v. Auberry*. "The rector is to repair the chancel because of the profit of the glebe, which is therefore *onus reale impositum rebus et personis*: and of that opinion was

PART II.  
CHAP. II.

charging, but in the deed instrument or assurance, by which the charge is made, or in other

“ Joannes de *Atkyn* (meant evidently for *Athona* by mistaking “ the reporter’s abbreviation of *Ath*) who wrote 100 years “ before Linwood, where in fol. 56 he saith, *that if the chan- “ cel were out of repair, it affected the glebe.*” John de Athona a canon of Lincoln flourished about the year 1290 and Linwood died in 1446. The awarding of a writ to the Bishop to levy execution *de bonis ecclesiasticis* of a debtor has always appeared to me unaccountable, in as much as it authorises a *sequestration* for a purpose, which the common law seems not to allow of : for it appears that by common law the Ordinary had no power of sequestering at discretion, or right to appropriate the goods sequestered to his own benefit or divert them from their original destination.

I need not repeat the 13th of Eliz. c. xx, which after directing, that in case the incumbent should grant an illegal lease the Ordinary should distribute the profits of one year of the benefice amongst the poor of the parish, declares that all chargings of benefices with cure shall be utterly void. This was so far from introducing any alteration in the old law, that nothing could more emphatically confirm the before-cited constitution of Stephen Langton, upon which the commentator says, (p. 149.) *ubi apparet, quod talis alienatio facta contra juris prohibitionem non tenet, immo est ipso jure nulla.* The 14th Eliz. c. xi. which gave continuance to this act of the 13th and repealed some words of it, which imported a right of granting leases in reversion, explains in part the word *chargings* by declaring, that the leases bonds promises and covenants of and concerning benefices to be made by curates shall be of no other force validity or continuance, than if they were made by the incumbent himself: and this would not have been enacted, unless the Legislature had presumed, that they already



other words, by which the benefice might independently of this statute have been affected? PART II.  
CHAP. II.

already had declared all such bonds promises and covenants of the incumbents themselves *utterly void*. The 18th of Eliz. c. xi. regulates the manner and determines the circumstances under which the Ordinary is to grant the *sequestration* of such benefices as shall be demised contrary to the 13th of Eliz. c. xx. and particularly enacts, that “they to whom such sequestration shall be committed shall justly and truly employ “and bestow the said profits or the true and just value thereof, “without fraud or guile, *to such uses as by the said statute is “limited and appointed,*” under pain of double forfeiture to be recovered by the poor of the parish in the ecclesiastical court. The last Act, which I find affects the point is 39 Eliz. c. ix. which gives continuance not only to the said Act 13 Eliz. c. xx. but to all explanations additions and alterations thereof then in force: “with this further addition; “that all judgments for the intent to have or enjoy any lease “contrary to the said statutes, or any of them shall be deemed “void in such sort as bonds and covenants are appointed to “be void which are made for that purpose.”

These Acts of Elizabeth like the first clause of *Magna Charta* are legislative acknowledgments and ratifications of the rights privileges and immunities, which the clergy enjoyed by common law. Seeing then how expressly the benefices and livings of clergymen were by common law exempted from alienation and charges, being unable to find any statutes, that have altered this law, and being convinced that ecclesiastical salaries stipends and benefices are not assignable either at law or in equity, I was induced to hazard these observations upon the apparent incongruity of these *sequestrations* at the suit of creditors, with the general rules and principles that govern ecclesiastical benefices and the temporalities of bishops.

All

PART II.  
CHAP. II.

Whether all  
the deeds  
securing  
the Annuity  
void, be-  
cause one is  
so.

All *chargings of benefices* can then mean nothing else, than the acts or deeds of those, who thereby charge or attempt to charge the benefices; and the Act declares them *utterly void*. The word *charging* here is a collective and very extensive term taking in the whole and every part of that assurance, which might otherwise have subjected the benefice to the Annuity. And it is now generally admitted, that *where there are several deeds securing the same Annuities, they are to be considered as constituting only one assurance*<sup>1</sup>. I must therefore conclude; that every deed instrument or assurance given with a view either primarily or collaterally of securing an Annuity by an incumbent out of his living is as to such living by the common and statute law utterly void. And here I may apply the saying of Lord Loughborough in *Duke of Bolton v. Williams*<sup>2</sup>. “*The Annuities* “ *being*

<sup>1</sup> *Hodges v. Money and Bailey*, 4 Term Rep. 500.—*Davidson v. Foley*, 2 H. Black. 12.

<sup>2</sup> *Duke of Bolton v. Williams et al.* 4 Bro. C. C. 210. 2 Vez. jun. 154. Lord Kenyon however in a later case of *Hart v. Lovelace* (6 Term Rep. 476.) said, “I am not prepared to say whether or not all the instruments given to secure an Annuity must be set aside, merely because one only is not properly registered. The cases on this subject are not reconcilable; but in the latest of them Lord Loughborough, who drew the Annuity Act, decided in the Court of Chancery, that if any one of the deeds constituting the assurance for the Annuity were not properly enrolled, all the “ instruments

*"being void, the Annuitants cannot recover. All  
the instruments are void."*

PART II.  
CHAP. II.

As few Annuities have of late years been granted but under the security of a judgment, and since the passing of the Annuity Act cases upon Annuities come much more frequently before the courts, than heretofore, and mostly for the direct purpose of setting them aside, I shall reserve the discussion of the nature of the remedies and redress which the grantees have in law and equity to the Last Chapter, which will consist of a review of the determinations of the Courts upon the Act.

"instruments were void." This however having been said immediately of the effect of a clause in the Annuity Act will be more properly considered in the Last Chapter,



## C H A P. III.

## OF THE ANNUITY ACT.

## CONTENTS.

*Introduction of the first Bill to Parliament by Mr. Wedderburne 1777—It's Nature and Objects more general than the present Act—Progress of the Bill—Division of the Plan—First Bill dropped—New Bill brought in—Committee appointed to consider and report upon the Laws concerning Usury—Their Report and another Bill brought in upon it to regulate Annuities for Lives—It went only to a Committee and there dropped—Notoriety of the Transaction a principal Object of the Act—Nature and Equity of the Act—Of the Preamble of the Act—Of the first Section of the Act—Difference between Registry and Inrollment of Deeds—Great Caution in the Legislature to render the Transaction notorious—The particular Objects of the Act—Of the Consideration of granting the Annuity and whether the Law Expences and Premium make part of it—Of secret Trusts in Annuities—Of the second Section of the Act—Of the third Section—Of the*

*Meaning*

*Meaning of the Consideration being in Money only—Of specifying the Names of Parties and the Modes of Payment and to whom in the original Deeds—Of the fourth Section which is of a complex Nature—Fifth Section of the Act—Sixth Section—Of Contracts being avoided—Seventh Section—Eighth and Last Section—Of the Exceptions—The Exceptions of Annuities granted by Tenant in Tail and in Fee-simple introduced by Solicitor General: not to be extended beyond the strict Words of the Act.*

THE views and motives of the Legislature in interfering and attempting to put a check upon the pernicious practice of granting Annuities for the Life of the grantor were highly commendable: and the gratitude of the public to those, who took an active part in so desirable an undertaking cannot be too loud or lively. It was impossible after the Titian glow, in which Mr. Erskine had so recently portrayed the ravages and devastation of that three-headed fiend *Ujury Gaming and Annuities*, that the Legislature should not take the alarm; and those members of it, should not come forth most forward, whose professional situation and habits afforded them experimental knowledge of the evil. As few statutes ever found a place in our code, upon which so many decisions of the courts have been made in so short

PART II.  
CHAP. III.

Cause of the subject's being brought before Parliament.

PART II.  
CHAP. III.

First Bill.  
brought in  
by Solicitor  
General,  
1777.

short a period of time, as upon this Act, it must be inferred, that in few Acts are so many individuals seriously concerned; and consequently no species of information, which relates to the passing of the Act directly or indirectly, can be indifferent to those, whom the subject of it in any manner affects.

On the 26th of February 1777 the present Chancellor, then Mr. Wedderburne Solicitor-General, presented to the House of Commons a bill, *to restrain the raising of money by sale of Annuities for the Life of the grantor*. As there has been almost an utter impossibility of reconciling several determinations of the courts upon the effects and tendency of some of the clauses in this Act, and the interpretation of a statute may often be facilitated by tracing the progress of the various alterations amendments and additions, which are made to the first form and shape, in which it was brought into the House, I shall for the satisfaction of my readers present to them a draught of this first original bill brought in by the then Solicitor General<sup>a</sup>, with the different clauses alterations and amendments, that it received in its passage through the Houses. We may perceive by the title given to this first bill, it's preamble and the different clauses afterwards added to it, that the intentions and views of the

<sup>a</sup> Vid. Appendix, No. XX.



two Houses in passing it were more general and extensive for repressing the destructive traffic of Annuities, than the Act, which now stands upon our parliamentary records. I can no where find any account of the debates upon this bill in any of it's stages. It seems to have travelled through both Houses without any opposition: the additional clauses, by whomever they were proposed, all tend to enforce and effectuate the end of the bill expressed in it's preamble: which was to prevent the ruin of young men of fortune and obstruct the loan of money at moderate Interest to persons in trade or for other laudable purposes. For who will lend money at five per cent. that can *legally* make three times that interest of it without risk or hazard?

It appears from the Journals of the House of Commons, that this original bill, which had received several though not important amendments in the House of Lords was on the 27th of March ordered to be printed with the amendments. From this time nearly a month intervened before any thing more was done in the business, during which time it is presumed<sup>1</sup>, the members, who

Progress of  
the Bill  
through the  
Houses.

<sup>1</sup> It was my wish to have favoured the public with a more exact and authentic account of the passing of the Annuity Act: but the application I made to the original source of information for this purpose having been rejected, I hope I shall

PART II.  
CHAP. III.

Division of  
the plan.

who took the lead in it, so far altered their scheme, as to divide their system into two branches, and to commit their management to different persons. Mr. Solicitor General retained the conducting of the original Annuity Bill, and Mr. Bacon took upon himself the charge of preparing and bringing forward the second bill, which appears to have been an emanation from and extension of the original plan for checking the evil so severely felt and so much then complained of.

The first  
bill dropped.

A new bill  
brought in.

Accordingly on the 25th of the ensuing April it was ordered by the Commons, that the amendments made by the Lords to the bill should be taken into consideration on that day three months. And on the same day they ordered in a bill *for registering the grants of Life Annuities and for the better protection of infants against such grants.* Mr. Solicitor General, Mr. Ellis, Sir Grey Cooper, Mr. Popham, Mr. Cornwall and Mr. Graves were deputed to prepare and bring it forward. This new bill, which was the exact draught of the present statute was brought in accordingly by the Solicitor General, &c. The introduction of this new bill was but a part of the new planned system for overthrowing this shall stand excused before the public for not having given a more satisfactory and detailed report of the different bills concerning the subject.

destructive

destructive hydra, for on the same day the House ordered, that a committee should be appointed to take into consideration and report upon the Laws in being against Usury and the present practice of purchasing Annuities for the life of the grantor. This committee was appointed to consist of Mr. Solicitor General, Mr. Wilkes, &c. A very instructive and interesting report<sup>1</sup> was made to the House, upon which they ordered a bill *to regulate Annuities for lives* to be prepared by Mr. Bacon Mr. Solicitor General Mr. Popham Mr. Newnham Mr. Ord Mr. Jackson Mr. Macdonel and the Lord Advocate for Scotland; it<sup>2</sup> was presented by Mr. Bacon, read a first and second time, went to a committee and there dropped; for what reason or at whose suggestion or upon what grounds, I never could certainly learn<sup>3</sup>.

It appears, that this bill of Mr. Bacon was but a part of Mr. Solicitor General's original plan: the greatest part of the preamble is bor-

PART II.  
CHAP. III.

Committee  
of Usury.

Their report and a third bill to regulate Annuities for lives brought in upon it.

Mr. Bacon's bill only a part of Mr. Solicitor General's.

<sup>1</sup> Appendix, No. XXI.

<sup>2</sup> Appendix, No. XXI.

<sup>3</sup> The anonymous author of *Reflections on Usury*, (p. 25.) has assured us, that "it was dropped on the suggestion, that "the Court of Chancery, that august and respectable guardian "of the oppressed, instituted to supersede the chicane of Petty-foggers and the quibbles and evasions of the known spirit of "the Law, was competent to give relief in all cases of Usury "and oppression."



PART II.  
CHAP. III.

rowed *verbatim* from the first bill: and the clause for redemption is transplanted from one to the other. If then the present Annuity Act be less efficient in checking or preventing Usury, than some might expect or desire, it is to be remembered, that the whole of the original design has not been carried into effect: and those, who undertake the execution of a part only of a plan cannot be looked up to for any responsibility either for the total or partial failure, of that part of it, which was committed to others. This is one out of numberless instances, in which we are taught to trust as little as possible to the whimsical and precarious turns of bills in parliament, and never to multiply Acts upon the same subject. I cannot however subscribe to the assertion of the author of the *Reflections on Usury*, that "instead of an Act to prevent  
" Usury, that, which supplanted Mr. Wedderburne's original design, tends to encourage it,  
" in that it lays open the borrower's circumstances, places every Annuity he has granted  
" on public record, and thereby enables the  
" purchaser to make his bargain on surer  
" grounds, than he could have done before  
" that Act existed." By reference to the original draught of Mr. Wedderburne's bill in the Appendix, it will appear by the very first clause

<sup>1</sup> Reflect. 7.

of it, that the inrollment of the security in Chancery was the most prominent feature of his original design. And it cannot surely be contended, but that whatever good has arisen from the Act, is attributable to the notoriety, which by it is given to the transaction: and the preamble of the Act itself alleges, that the *pernicious traffic is much promoted by the secrecy, with which such transactions are conducted.*

Mr. Hunt has told us, that the Annuity Act <sup>1</sup> 17 Geo. III. c. 26. was made <sup>2</sup> “to throw some “check upon improvident transactions of this “kind, which are usually carried on with great “privacy and to provide against the fraud and “circumvention of those, who are always too “ready to take advantage of the necessities of “distressed persons desirous of taking up money “upon Annuities.” The business of this Chapter will be to make such comments observations and reflections upon the Act, as have not been called forth from the Courts in the different decisions, they have made on the cases brought before them upon the Annuity Act.

View of the  
Act.

The title of the Act, *for registering the grants*

<sup>1</sup> Vide the Act in Appendix, No. XXII.

<sup>2</sup> Collection of Cases on the Annuity Act with an epitome of the practice relating to the enrollment of memorials by William Hunt, Esq. of Lincoln's Inn, barrister-at-law, 2d edit. 1796. Introduction, p. 4.

PART II.  
CHAP. III.

The present  
Act narrow-  
ed more  
than the first  
Bill.

Equity of  
the Act.

Preamble of  
the Act.

*of Life Annuities and for the better protection of infants against such grants* clearly shews, that the Legislature had narrowed it's views and intentions in passing this Act much within the scope of their original and general design of *restraining the raising of money by the sale of Annuities for the life of the grantor*, which was the title of the first bill, intending evidently to effectuate this general restraint by the bill, which they then had it in contemplation to bring forward upon the grounds of the affinity and analogy, which the sales of these Annuities bore to usurious transactions in general. As however the intended bill never passed into a law, we are to consider the present Act upon it's own basis only, and although the title have been so narrowed, yet by the words of the preamble, the spirit and equity of the Act appear to be almost as general and extensive as if the Legislature had proceeded in this Act, upon their original and undivided system of *restraining the raising of money by the sale of Life Annuities*.

The words, *whereas the pernicious practice of raising money by the sale of Life Annuities hath of late years greatly encreased* assume what the preamble of the first intended bill specified more in detail, by introducing the epithet *pernicious*, instead of expressing the manner, by which the practice became so; "whereby not only many  
" persons



“ persons having anticipated their income are re-  
 “ duced to early ruin, but the fair loan of money  
 “ at moderate interest to persons engaged in the  
 “ various pursuits of useful industry is and must  
 “ be greatly obstructed.” As therefore this Act  
 is bottomed upon the same principle, as that  
 bill, which was intended to *restrain the raising of*  
*money by the sale of such Annuities* generally, it is  
 evident, that it ought to be so interpreted on all  
 occasions as to repress as much as possible that  
 practice, which it so emphatically terms *perni-*  
*cious*. I shall content myself with some few ge-  
 neral rules of construing statutes, which appear  
 most peculiarly applicable to the Act under our  
 present consideration. In the case of *Willion v.*  
*Berkeley* <sup>1</sup> it was said by *Brown J.* that “ the in-  
 “ tent of the Act is always to be regarded, and  
 “ to such purpose only ought the words to be  
 “ construed.” And in *Stradling v. Morgan* <sup>2</sup>  
 Chief Baron Saunders said “ the reason of the  
 “ Judges interpretation of an Act has always  
 “ been the intent of the makers of the Act,  
 “ which they collect sometimes from the con-  
 “ sideration of the cause and necessity of making  
 “ the Act, sometimes from the words of other  
 “ parts of the Act and sometimes from foreign  
 “ circumstances.” It was in order to bring the

Rules for  
construing  
statutes.

<sup>1</sup> Plowden, 231.

<sup>2</sup> Plowden, 205.

PART II.  
CHAP. III.

interpretation of this statute more immediately under these rules, that I have submitted to my reader the general conduct of the makers of the Act not only immediately as to the wording of the Act itself, but generally as to the subject of it: and this I thought, could not be done with more effect, than by furnishing him with the draught of the bills and report, contained in the Appendix. From these it manifestly appears, that the makers of the Act were emphatically bent upon discountenancing and repressing the practice of dealing in Annuities, and that the enormous advantages, which the purchasers of these Annuities drew from their bargains even without hazard under assurances were so very faintly distinguishable from the usurious profits on loans, that it was their intention to draw them under the same punishments.

Of 1st section of the Act.

The first section of this Act comprizes the grand remedy proposed by it to obviate and do away the secrecy of the transaction, and therefore directs a memorial of every deed bond or other assurance, whereby any Annuity for life or lives shall be granted to be inrolled in Chancery within twenty days after their execution: which memorial is to contain the date, the names of the parties and of the attesting witnesses, the trusts (if any) the estate granted and the consideration; otherwise every such deed bond instrument

strument or other assurance shall be null and void to all intents and purposes.

PART II.  
CHAP. III.

Defect of  
registering  
deeds and  
forms of in-  
rollment.

Notoriety and notice are evidently the grounds of this injunction. Now it has ever appeared singular to me, where it was intended fully to disclose to the public the whole of a transaction, which has passed by deed, that a *registry*, which is but a partial memorandum or abstract and entry of a deed should be substituted and preferred to a faithful transcript and copy of the whole deed, which is more properly called an *inrollment* of it. I have heretofore<sup>1</sup> taken an opportunity of noticing not only the imperfection, but also the positive mischief of the memorials directed to be registered of deeds affecting lands in the counties of York and Middlesex. The memorials of such deeds are directed to contain the date, the parties, the parcels and the subscribing witnesses. They fall short however of the memorials directed by the Annuity Act by the requisition of the latter to express the nature of the estate granted and the consideration of the grant. The provisions of the Annuity Act go even further, without requiring a complete inrollment of the deeds *ver-*

<sup>1</sup> Vid. *Impartial Thoughts upon the beneficial consequences of inrolling all deeds wills and codicils affecting lands throughout England and Wales by the Author 1789, pp. 11. 70. et alibi passim.*



PART II.  
CHAP. III.

Notoriety  
the primary  
object of the  
bill.

*batim*, than any Inrolling Acts do, in as much, as they require an absolute declaration of any private trust concerning the Annuity, which may be created or referred to by the deed. It is impossible, that human ingenuity and caution should go further in providing against the secrecy of the transaction, than the memorials required to be registered by this Act: and by the title and preamble of the Act, this appears to be it's primary object. It has been therefore in the true spirit and equity of this Act, that so many Annuities have been set aside for defect, in the memorials<sup>1</sup>. The cases, which the Courts have actually decided upon such defective memorials will be the subject of the next and Last Chapter. I shall therefore proceed to consider some general effects of this clause, which do not appear to have come before the Courts;

<sup>1</sup> It might be here naturally expected that I should say something upon the technical form and manner of memorializing these deeds. Several practical instructions and forms of memorials are given by Mr. Hunt in his *Collection of Annuity Cases*, chap. ii. 2d edit. from p. 262. to 282. As no specific form is appropriated to deeds or bonds or other assurances, by which Annuities may be secured, and as the strict conformity or reference of the memorial to such deed bond or assurance is the principal or chief object to be attended to in the framing of the memorial, where there is no fixed form of deed, there can be no fixed form of memorializing it as is self-evident. If an exact copy of the deeds were to be entered as is the

Courts ; premising, that there is no other variation in it from the first clause of the first intended bill except in dropping the necessity of expressing in the memorial the *additions* as well as the *names* of the parties and subscribing witnesses to the deeds.

Nothing can be more obvious, than that the intent and purview of the Act is to bring under the eye of the Public by the memorial every circumstance, that attended the negociation of the sale of the Annuity, in order that the Court may be furnished with evidence of the time and nature of the grant, the abilities of the grantor and grantee, and the full and exact amount and extent of the consideration or price of the Annuity ; and also if there be any trust in any of the parties for others, which does not appear upon the face of the deed. The direct view of the framers of this Act, under all the circum-

The particular objects of the Act.

the case of inrolling deeds, still this would not in some cases satisfy the statute, which requires more to appear upon the face of the memorial, than what the legal purport of the deeds imports. The memorial therefore ought rather to be termed a statement of the transaction, than a memorial or registry of the deeds executed by the transacting parties. For which reasons I conceive, that no other rules or directions can with propriety be given for framing these memorials, than a literal adherence to the requisitions of the Act, in whatever form the deeds and transactions, which the memorial ought to set forth fully and truly may have assumed.

stances

PART II.  
CHAP. III.

stances I have before mentioned of the original design being divided, and one part of it going forward under the committee of Usury, must have been to set aside every transaction, in which a party felt himself aggrieved either from the neglect of attending to the requisitions of the Act, or from some original defect in the contract or negociation. All which circumstances the Legislature proposed to bring fully and explicitly before the Courts by means of the memorial, in order that none but fair and equitable transactions should receive their countenance and support. And as we have before seen, that an inchoate negociation about a loan may infect the sale of an Annuity with Usury, that gross inadequacy of price may render it voidable, and the charging it upon military naval civil and ecclesiastical revenues or stipends may make it void, I think no circumstance trivial, that can by any construction be brought within the widest meaning of the *consideration of granting the Annuity*.

Of the consideration of the Annuity.

This consideration is to be taken in two points of view both as to the *quid* and the *pro quo*. It fulfills not the purpose of the Act to state merely what the purchaser of the Annuity paid upon the sale, but what the seller netted by the transaction: for upon this latter chiefly depends the adequacy of the price: and there is

not



not a question, but that the Act was made to favour persons aggrieved by hard bargains. There cannot then be paid by the vendor any sum of money under the agreement on account of the transaction, which is not a diminution *pro tanto* of the price he receives for the Annuity: and if so, it affects the consideration of granting the Annuity, and should therefore it is presumed be specified in the memorial, which is required to set forth the *consideration of granting the same*.

From the infrequency of stating in the memorial the expences and the premium brokerage or procuration money upon the sale of an Annuity as parts of the consideration of granting the same, I feel myself called upon to enter somewhat into the detail of my reasons for hazarding this presumption, which may at first startle the ideas and opinions of many. As I am not to consider the transaction a *Loan*, I must treat it as the *Sale* of an Annuity. This like every other purchase must be preceded by an agreement between the vendor and vendee or their respective attornies or agents. In this agreement or contract, which is presumed to be entered into freely and with the full accord of the parties, are settled the terms and conditions of the sale: and whatever either of the contracting parties agrees with the other to pay  
evidently

Whether the  
expence and  
premium  
make a part  
of the con-  
sideration.

PART II.  
CHAP. III.

evidently makes a part of the consideration for granting the Annuity or making the Sale. I take it to be immaterial to the question now under discussion, whether the agreement be written or unwritten, express or implied. The usual agreement in most sales of Annuities for the lives of the grantors, is that the vendor shall pay all the expences of the negociation, not only the brokerage or premium for procuring the money, but the law charges to the solicitor or agent of the purchaser. Now if this be done under or by virtue of the agreement, it evidently affects the consideration of granting the Annuity and therefore ought to be set forth in the memorial. For by how much the grantor pays to the solicitor or agent of the grantee for the transaction, by so much he reduces the value price or consideration of the Annuity. It was said in *Murray v. Hardinge*<sup>1</sup> by serjeants Hill and Walker: "The deeds were paid for by Hardinge. This shews it was no purchase, but a loan. The common usage is, that vendors do *not* pay for the conveyance, but that borrowers do." I cite not this for the purpose of establishing the inference, which they drew from it; but to prove, that as the common usage is, that the purchaser and not the seller

<sup>1</sup> 2 Black. 862.

should pay for the conveyance and other law charges, the contrary practice must arise out of a special contract or agreement to that effect.

PART II.  
CHAP. III.

Of the ven-  
dor's paying  
the law-  
charges of  
the Usury  
agent.

A agrees to purchase an Annuity of 100l. of B for the life of B for 600l, and B agrees to pay all the expences of the transaction, which, as is most frequently done, are previously settled with the agent of A at half a year's purchase or 50l. Now it is evident, that by the effect of this agreement B receives only 550l. for the Annuity, which he grants; and it is futile to pretend, that this is a matter foreign from A; because in transactions of this nature law-charges and expences must necessarily be incurred; and they then only make *no* part of the agreement, when each party pays his own expences. But wherever by agreement one party is to be at the expence of the whole, it is evident, that thereby the grantee is enabled to add to the price, which he gives for the Annuity, as much as he saves from the non-payment of his agent's costs. I pretend not to say, that if the grantor pay to the agent of the grantee more for his costs and charges, than the grantee would without such agreement have been compellable to pay, that such excess of payment beyond the fair and just demand makes any part of the consideration between the parties, unless the grantee be privy to the extravagant agreement. Yet upon no pretence



PART II.  
CHAP. III.

pretence whatsoever can it be supported, that the payment of the just charges of the grantee's agent by the grantor, makes no part of the contract or agreement and consequently of the consideration. By reversing the case, and supposing a special agreement under which the grantee pays the whole expence of the negotiation, will it be pretended, that this would not alter the consideration in favour of the grantor? If then it alter the consideration, it must affect it, and that it cannot do but by adding on one side and diminishing on the other: the exact *quantum* then of the consideration price or value of the Annuity cannot be ascertained nor truly set forth without specifying the sum, which under and by virtue of the agreement one party pays to the agent of the other, when without such agreement each party would have been obliged to pay the charges of their respective agents: and the alteration of this agreement would have made an alteration in the terms or consideration of the bargain. Far be it from me to suggest, that this sort of agreement for the payment of all the costs and charges of the transaction is unfair or fraudulent; but it certainly makes that alteration in the consideration, without which it cannot be known how much the Annuity purchased really cost; for that is only measured by the net produce of the sale, which can alone constitute such

such hard and unconscientious bargains as the statute was intended to set aside.

Amongst the various cases, which have arisen upon the extensive operation of the numerous requisitions of this first clause, and which will be noticed in the ensuing Chapter, I cannot help observing, that a very frequent occurrence in this species of transactions seems not to have come before the Courts with reference to the trusts. I readily admit, that a strict adherence to the latter would be a great hardship in many cases upon the grantee; but to this it may be replied, that the Act was intended to afford the grantors opportunities of avoiding Annuities under which they were supposed to suffer and be aggrieved. A distressed man wants to raise a sum of money by sale of Annuity and he either joins another person with him in the grant or procures him under an indemnity to become the sole grantor; or a man wishing to ensure twelve or thirteen per cent Interest for a sum of money, but unwilling to have it known purchases an Annuity in the name of another: In the first instance the whole of the purchase money is received only in trust for the distressed grantor, in the 2d the Annuity is secured in trust for the concealed grantee: it is very possible that this trust may be really kept from the knowledge of the

PART II.  
CHAP. III.

the other contracting party ; and that the grantee may be ignorant of it for twenty days after the execution of the deeds, so that he could have no opportunity of declaring the trust upon the memorial. The words of the Act do not appear to refer only to such trusts as appear upon the face of the deeds, but emphatically to such as appear not, viz. *secret trusts*. How far therefore the Legislature meant to annul every Annuity negotiated under any secret trust or confidence, that could not be discovered or known to all the contracting parties I do not pretend to decide : but there can be little doubt, but that if in a negotiation, where the purchaser has treated with the principal for the Annuity and demanding the security of another, to whom he knows no part of the consideration is to be paid, there the trust is to be so specified in the memorial, that it should thereby appear to whose benefit the consideration-money was really applicable, and that the surety who joined without consideration was in some sort only a trustee for the party, with whom he joined in the security. Upon the like principle, should I presume that transaction would not be fairly set forth in a memorial according to the intent of the statute, in which a fourth only of the purchase-money having been paid to or for the benefit of one out of



of two grantors, the memorial should state or infer the consideration to have been paid equally between them both.

PART II.  
CHAP. III.

The *second section* of this Act can require nothing more to be said upon it, than the first; as it merely goes to oblige a grantee of an Annuity before the passing of the Act to register the same sort of a memorial before he enforces his legal remedies, as a grantee since the passing of the Act must within twenty days, in order to give validity to his security. Under both sections it is observable, that the securities are not merely voidable, but void. By reference to the Appendix <sup>1</sup> it will appear, that this clause *verbatim* as it stands, was introduced and added to the first bill, that was afterwards dropped.

Second section of the Act.

The *third section* of the Act affects the deeds, by which the Annuity is intended to be secured: and declares them absolutely *null and void*, in case the consideration really and *bona fide* paid (which shall be in money only) and also the names of the persons, by whom and on whose behalf it shall be advanced, are not set forth and described in words at full length.

Third section of the Act.

The avoidance of the securities on account of these informalities in the deeds or assurances is a remedy, which the Annuitant can rarely take advantage of, as the deeds and assurances are in

<sup>1</sup> Appendix, No. XXI.

PART II.  
CHAP. III.Of the con-  
sideration in  
money only.

the possession of the adverse party. As the first clause of the Act directs in fact a declaration of trust to be made by the memorial, so this, on one side at least, avoids any deed, upon which any trust remains to be declared; for if it do not set forth the real person, who purchased the Annuity the deed is *ipso facto* void.

The words included in the parenthesis (*which shall be in money only*) are very far from being clear and explicit; what meaning the Courts have annexed to them we shall hereafter consider. The literal and grammatical sense of the words apparently import, that no other consideration for granting an Annuity besides money should be valid. For as the Act was made to prevent and remedy fraud imposition and hardship upon distressed men, it is to be presumed that the Legislature undertook to avoid in the first instance a deed, whereof the consideration consisted of goods or any thing else of precarious ideal or indefinite value; so liable to be overreached and imposed upon did they suppose those, who were by distress driven to the melancholy necessity of raising money by means of Life Annuities. That this was the intent and meaning of the framers of the Act appears uncontroversible, when we find, that the insertion of these words, instead of some others, was the only alteration made in this clause, from the correspond-

ing clause in the original bill <sup>1</sup> that was afterwards dropped. The alteration consists in the substitution of the words *which shall be in money only* for the following words of the first bill, *and in case the same or any part thereof shall consist in goods or any other thing than money, the nature quantity and value of such thing and things.* Looking then to the intent of the Legislature to protect the grantor not only from fraud or imposition, but also from every degree of oppression or hardship it appears to me conclusive, that they made this alteration in favour of grantors, in order to save them not only from having unserviceable or inconvenient goods or other things palmed upon them, but also to keep them from the trouble and expence of measurements and appraisements, and above all to secure them from suits and litigations on account of such considerations, which are more susceptible of imposition and fraud, than money or cash, the sterling and current value of which can be unknown to none.

If the spirit of the Annuity Act and the example of the different Courts did not call for so very rigorous a construction of every part of it, which tends to favour and relieve the grantor, I should not perhaps have felt myself called upon to stir even a doubt upon the effect of these

Of the effects of not specifying names and payments in the original deeds.

<sup>1</sup> Vid. Appendix, No. XXI.



PART II.  
CHAP. III.

words of the clause, which require, *that the name or names of the person or persons, by whom and on whose behalf, the said consideration or any part thereof shall be advanced, shall be fully and truly set forth and described in words at length: and in case the same shall not be fully and truly set forth and described, every such deed instrument or other assurance shall be null and void.* I pretend not to anticipate or to invent difficulties: but it seems consonant with the letter and spirit of this part of the clause, that in case a bond were given for the payment of an Annuity, and in such bond neither the consideration paid for the Annuity were expressed, or in case of the consideration being actually paid by a third person, it were not expressed so to have been paid by such third person for and on behalf of the real purchaser, the bond would be void, as would any other deed of grant made without strict attention to the requisites of this clause. If then for want of such formality (or indeed for any other cause) the Annuity Bond should be void, it follows of course, that the warrant of attorney to confess judgment upon such bond and the judgment, if ever entered up upon it would be vacated by the Court: for no valid structure can be raised upon an invalid foundation. But if the Act go the length of requiring these peculiarities in the original securities, so as to declare all deeds,

which



which want them *invalid and null*; a *fortiori* must such payments be specified both as to the money paid, and the person by and on whose behalf it is paid be expressed in the memorial; and this for a double reason: the first is that the memorial may fully and truly set forth the whole transaction, as it really passed: the second is in order to enable the seller of the Annuity to avoid the security for want of this formality and requisite, which he can alone learn from the memorial, in case duplicates be not executed of these grants, which is very seldom the case.

The *fourth section* of the Act is of a complex nature: it is in part a confirmation and in part a contradiction of the foregoing clause. The foregoing or third section is directory of two things: the principal is, that the full consideration and the mode of it's payment shall be specifically set forth upon the face of the security: the secondary or incidental thing is equally positive with the first, viz. that the consideration shall be in money only. Now if under any of these circumstances, the security be to all intents and purposes *null and void*, it appears futile and nugatory to declare, that it shall be lawful for the grantor to apply to the Court and for the Court to order such security to be cancelled and the judgment vacated. Had the third section declared the security only *voidable* and not void,

Fourth section of the Act.

PART II.  
CHAP. III.

Contradiction of this clause.

then indeed might there have been some reason for giving direction how to avoid it.

This section so far confirms the foregoing, as it directs and empowers the Court to order the security to be cancelled and the judgment, if any have been entered, to be vacated, if the consideration be paid in goods or if any part of it be retained by the grantee on any pretence whatever. Now these two conditions were fully provided against by the third section, which directs the consideration to be in *money only*, therefore not in goods, and the consideration really advanced to be fully and truly set forth in the deed; therefore no part of it to be retained. And it so far contradicts the third section, ordering the Courts to cancel the deeds, in case the notes, in which the consideration is paid be not afterwards duly honoured, for this is presuming, that if they be so, the Annuity is valid: whereas it is evident, that a consideration paid in notes or draughts, is not paid *in money*, and the third section had already declared every deed instrument or other assurance null and void to all intents and purposes, where the consideration was not paid *in money only*.

By reference to the Appendix<sup>1</sup> the reader will observe, that this fourth section of the Act is an amended draught of the second clause in-

<sup>1</sup> Appendix, No. XXI. Clause B.



serted in the original bill, which was styled a clause *for ascertaining the consideration, for which an Annuity is granted*: and he will remark, that by the Legislator's omitting the words of the bill, *if the goods are not of the value set upon them*, they fully and explicitly meant, as I have before observed, that no goods whatsoever should be a valid consideration for granting an Annuity: and therefore in the foregoing section did they declare, that the consideration should be *in money only*. I shall have occasion to say something more upon this subject in the next Chapter.

The fifth section of this Act is no more than a mere direction to the clerks in office, in what order, in what manner and for what fees they shall enroll the memorials, give copies and permit searches. It is an exact copy of the fifth and corresponding clause in the original bill. The clause admits of no comment.

Fifth section.

The sixth section of this Act, although I find no case immediately decided upon it, is properly speaking the second material clause of the Act, as by it the second part of the title of the Act is carried into effect: viz. *for the better protection of infants against such grants*. For this purpose it enacts, That every contract for the purchase of an Annuity with any person under the age of twenty-one years, shall be and remain utterly void, notwithstanding any attempt to confirm

Sixth section.

PART II.  
CHAP. III.

the same, after such person shall have attained the age of twenty-one years. And it then proceeds to declare that any species of negotiation with minors under the age of twenty-one years concerning an Annuity, whether it be to be secured or paid during their nonage, or after they shall have attained the age of twenty-one years, shall be deemed a misdemeanor punishable by fine imprisonment or other corporal punishment, as the Court shall think fit to award.

Mr. Powell's argument against the avoidance of the contract.

Mr. Powell<sup>1</sup> has entered into a very elaborate argument to prove, that the Legislature in this sixth clause having altered it's phraseology, from no longer adverting to the securities, which alone are mentioned or specified in the foregoing clauses, but providing by the sixth section, that *all contracts* for the purchase of Annuities with infants shall remain utterly void, and incapable of being confirmed by them after they attain the age of twenty-one years, has in fact and substance left the original contract for Annuities with adults even after the securities may have been avoided by the statute, as valid and liable to be enforced, as if the Act had not been made. The examination of this argument will be more orderly, when I take under consideration the determinations of the Court upon this part of the Act. I shall here merely remark, that the Act

<sup>1</sup> On Contracts, 1 vol, 212,

clearly

clearly meant to draw this broad distinction between negotiations *with minors* and *with adults*, which was to avoid these latter but only under certain circumstances contingencies and conditions, and to create an utter impossibility of the former becoming valid under any circumstance contingency or condition whatsoever.

The general object of this section made a part of the original bill, as appears by the seventh section of it: but from it's being so much strengthened beyond a pecuniary forfeiture, by the avoidance of the contract and the discretionary punishment of the misdemeanor, it appears probable, that the alteration of this section gave rise to the alteration of the title of the original bill to that of the present Act.

The *seventh section* of the Act, was copied from an introduced clause in the original bill<sup>1</sup>. It shews how tender and tutelary the Legislature was of the interest of the grantor, whom throughout it considered as acting under duress. It declares therefore, that the demand or receipt of more than 10s. per 100l. by any solicitor scrivener or broker for procuration-money or brokerage shall be guilty of a misdemeanor and be punishable by fine and imprisonment at the discretion of the Court. And it provides, that the

Seventh  
section.

<sup>1</sup> Vid. Appendix, No. XXI. Clause D.

person



PART II.  
CHAP. III.

person paying such money shall be deemed a competent witness to prove the same.

The provisions of this section need no comment : they are strict and simple and constantly infringed with impunity.

Eighth section.

The *eighth and last section* of the Act consists of a long string of exceptions, which keep certain cases out of it.

Three first exceptions.

If we reflect that this Act passed for the direct purpose of checking the pernicious practice of raising money by the sale of Life Annuities, we shall readily account for the three first exceptions, which are of Annuities given or secured by will, marriage-settlement or for the advancement of a child : for here is no raising of money by the sale of Life Annuities ; any more than there is in voluntary grants.

Exception of Annuities under vol. unaccountable.

The last exception of Annuities under vol. is not readily accounted for : for the exility of the sum rather bespeaks the poverty and distress of the grantor : and by how much greater these are, by so much more liable is he to be hardly dealt with and consequently the more proper object of the relief given by the Act. These exceptions were comprised in the original bill, as it was first brought in.

Of the exceptions introduced by the Solicitor General.

The following exceptions were introduced upon the second or third reading of the original bill, and apparently upon very mature deliberation,

tion, as they appear in the hand-writing of the gentleman, who introduced the bill : viz. <sup>1</sup> “ nor  
 “ to any Annuity or Rent Charge secured upon  
 “ lands of equal or greater annual value, whereof  
 “ the grantor was seised in fee-simple or in fee-  
 “ tail in possession at the time of the grant, or  
 “ secured by the actual transfer of stock in any  
 “ of the public funds, the dividends whereof are  
 “ of equal or greater annual value, than the said  
 “ Annuity : nor to any Annuity or Rent Charge  
 “ granted by any body corporate or under any  
 “ authority or trust created by Act of Parlia-  
 “ ment.”

PART II.  
 CHAP. III.

The view motive or principle which, I humbly presume, directed these exceptions must have arisen from the consideration of the grantors of any such Annuities possessing other means of raising money, than by sale of Life Annuities, and consequently not being under the like necessity of submitting to hard bargains as those, whom the Act more particularly meant to relieve.

Reasons for  
 their intro-  
 duction.

The general equity of this statute evidently tends to enable those to rescind hard bargains, who if the Act had not been passed, must have continued for their lives to pine in misery under the grinding pressure of their folly or misfortune. We see how disposed the Legislature was to open a right of redemption or repurchase to

The equity  
 of this sta-  
 tute.

<sup>1</sup> Vid, Appendix, No. XXI. Draught of the Bill.

every

PART II.  
CHAP. III.

every one suffering under this devouring evil by inserting a clause for that purpose in the original bill, and engrafting it afterwards in another bill, which was in it's actual progress through the House of Commons for *regulating Annuities for Lives*. Now although we be not authorised to argue definitively from those bills, which the Legislature never completed, yet they are explanatory of the spirit and intention, in which they passed the Act upon the same subject, and warrant this inference, that wherever a grantor is pressed by a hard bargain of Annuity, he shall not be precluded from the redress and benefit of the Statute, but by being strictly within the terms of the exceptions. Thus for instance I should presume, that an Annuity granted by tenant for life with power of appointment or charging would not so come within the exception of the Act as to supersede the necessity of registering a memorial of it, and deprive the grantor of any advantages, which might accrue to him under the provisions of the Act, which evidently were intended to check the pernicious practice of taking up money by the sale of Annuities for Life, and to relieve those, who had been driven to that baneful exigency. Instances have frequently fallen and particularly of late, within mine own experience, in which tenants for life with a power of appointment, tenants in tail and



and even in fee-simple have not been able to raise money in their distresses, otherwise than by the sale of Annuities for their own lives. Such is the surety and profit arising to the grantee from such negotiations. Their powers to raise money by other means, which in the moment of their wants they cannot procure, secure to them no favour in their terms with the purchaser. A tenancy for life is to the vendee as good a security for the Annuity, which he is about to purchase, as a fee-simple. Nor do I conceive a solid reason, why a tenant in fee suffering under as hard terms in his bargain, as if he had only a life estate, should be precluded from the equity and advantages of an Act intended for general benefit, merely because he possessed the power, though found not the opportunity of supplying his wants by other means, than by sale of an Annuity for his own life.

If the enjoyment of larger means than are possessed by tenants for life of raising money were the real ground of introducing these exceptions into the bill, it is wonderful, that the exceptions were not extended to all persons indefinitely, who possessed any fund real or personal, upon which they might safely raise by sale mortgage charge or otherwise, as much money as was actually received from the sale of the Annuity. For in all such cases, the sellers of the

Annuities

Of the effects of these exceptions.

Annuities or the borrowers of the money, which are terms substantially synonymous, being out of the supposed mischief, are within the same equity. It is immaterial to the substance or principle of negotiating and securing an Annuity of 100l. for the life of the grantor, whether he be possessed of 1000l. per ann. from dividends in the funds, seised in fee of land of the yearly value of 1000l. and entitled also for his life to other landed property to the amount of 1000l. per annum, whether he charge it on his life estate or on his fee-simple or on the money in the funds. He will procure no better terms from the purchaser by making it issuing out of one more than out of the other, nor will the purchaser himself acquire any better security by the preference: and yet as the Act is now worded, if he secure the Annuity out of his life estate, he will be entitled to all the equity and advantages of the Act, if otherwise he will be precluded from them. The more I reflect upon the nature reason and effects of those exceptions, the more thoroughly am I convinced, that they are not to be extended by any construction to other cases, which are not strictly within the words of the Act, although the grantors of the Annuity might to some purposes enjoy that dominion over their property, which should be almost equivalent to a fee-tail or a fee-simple in the lands.

Such

Such would be the case of a tenant or tenants for life, with a separate or joint power of appointing, charging, &c. As this question has been in part considered by the Court, I must reserve what further I have to offer upon this subject to the next and Last Chapter.

PART II.  
CHAP. III.



## C H A P. IV.

OF THE DETERMINATIONS OF  
THE COURTS UPON THE  
ANNUITY ACT.

## CONTENTS.

*Of the Tyrannical Principle of giving Operation to Acts of Parliament from the first Day of the Session even before they were framed—Several Instances of the Injustice operated thereby—This Injustice put an End to by the 33 Geo. III.—Every Deed to be inrolled by which an Annuity is secured—Warrant of Attorney such an Assurance—The Judgment not so—Of registering Assignments—Of specifying the Dates of the Deeds and the Names of Witnesses in the Memorial, and all the Trusts of the Deed—Inconsistency of the Decisions upon all the Trusts being set forth—Of the Consideration of granting the Annuity—Of Bankers' Checks and Promissory Notes—Bank Notes taken as Cash—Of specifying the Mode of paying the Consideration—Of setting it forth falsely and the Consequences of it—Of paying the Consideration at different times—Of the Terms of the Contract*

*tract making a Part of the Consideration—Of the Law Charges making a Part of the Consideration—Of the twenty Days given by the Statute for registering—Difference of Opinion of the King's Bench and Common Pleas upon the Necessity of inrolling an Assignment—Of one Annuity's being the Consideration of another—Of the Difference between the first and the fourth Section of the Act—Of all the Deeds being void by the Nullity of one of them—Of stating in the Deeds the Names of the Agents who pay the Consideration-Money—Of the fourth Section—Of retaining a Part of the Consideration—Of the Persons who may apply to the Courts for Relief under the fourth Section—Of being barred by Length of Time and Laches of the Parties—Of the Court's Discretion in entertaining Applications—Of the Difference in the Opinions of Lords Loughborough and Kenyon upon the Limitation of Time—Of the Province of the Courts—What Courts may entertain Applications under the Act—Of the Jurisdiction of the Courts with or without Actions commenced—Whether Grantors who do not confess Judgments be precluded from the Benefit of the Act—The Courts act upon the Cases within the Statute according to their original Jurisdiction—Of the Contract with Minors being avoided—Whether all Contracts be avoided where the Securities are null—Of the Punish-*

*ments of Misdemeanors under the Act—Of the Cases excepted out of the Act.*

PART II.  
CHAP. IV.

Of Acts of Parliament commencing their operation from the first day of the Session.

THE Annuity Act is one of the many instances of the extreme injustice of that monstrous principle of referring by anticipation the operation and effects of an Act of Parliament to the first day of the Session, where no particular day is appointed for its commencement. The Session, in which the Annuity Act was passed, commenced on the 31st of October 1776, and the royal assent was given to the bill on the 16th of May 1777: during this period of nearly seven months, the Act operated retrospectively and *ex post facto* upon all those, who transacted any Annuity-negotiation during this period of ensnaring tyranny, as several persons were actually punished for neglecting to conform to conditions, of which they were even physically disabled from acquiring any knowledge or receiving notice.

Case of  
*Latliff v.*  
*Holmes.*

In the case of *Latliff* and *Holmes* <sup>1</sup> the Court of King's Bench determined, that for want of inrolling a memorial according to the Annuity Act within twenty days after the execution of the Annuity deeds, which bore date four months before the royal assent was given to the bill, the securities were declared void: as the rule of law

<sup>1</sup> 4 Term Rep. 660.



so long settled ought not now to be shaken, viz. that where no specific day is mentioned in an Act of Parliament, from which it is to take effect, it commences by legal relation from the first day of the Session <sup>1</sup>. This rule was twice recognised by the same Court in two other cases, the first was in *Hopkins v. Waller* <sup>2</sup> and the next in *Hall v. Whalley* <sup>3</sup>. Happily for Englishmen,

PART II.  
CHAP. IV.

Two other  
cases.

<sup>1</sup> In this case much stress was laid both by the Counsel and Court upon the case of the *Attorney General v. Panter*, which the Court observed was founded on prior determinations. 6 *Brown's Parl. Cas.* 553. where a duty of 6d. in the pound upon the exportation of rice was levied for rice exported before the Act imposing the duty had received the royal assent. In *Rex v. Thurston* (1 Lev. 91.) upon this rule a man was made a murderer *ex post facto*, though it seems he was afterwards pardoned: Some few years ago Mr. Drummond the immediate descendant of the late Viscount Strathallan, who was killed at the battle of Culloden applied to the House of Lords to be admitted to the honors of his father upon the ground of the descent having been actually cast upon the son by the death of the father, before the Act of Attainder was passed against the father. But the House of Lords held themselves bounden by the rule so formally established and gave effect to this Act of Attainder from the first day of the Session, which in fact preceded the death of Lord Strathallan. There were quoted also 4 Inf. 25. Bro. Ab. *Parliament*, pl. 86. Bro. Ab. *Relation*, pl. 43. 1 And. 295. Cro. Car. 424. *Sir Robert Henley v. Jones*. 1 Sid. 310. *Rex v. Call*. Comb. 413. and 1 Lord Raymond 370.

<sup>2</sup> 4 Term Rep. 463. This case was decided in 1791 Mich.

<sup>3</sup> This case is not reported though mentioned in a note on the report of *Lattle's v. Holmes*; it was determined on the same rule in the absence of Lord Kenyon 29 Geo. III.

PART II.  
CHAP. IV.

33 Geo. III.  
c. 13.

this monstrous rule of injustice was lately entombed in a Statute, which would have done honor to the happiest days of our political glory. By the 33d of his present Majesty (c. 13.) it is enacted, that the Clerk of the Parliament shall indorse on every Act, which shall pass after the 8th of April 1793, immediately after the title of such Act, the day, month and year, when the same shall have passed and shall have received the royal assent, and such indorsement shall be taken to be a part of such Act and to be the date of it's commencement, where no other commencement shall be therein provided. Thus ended the *great and manifest injustice*, as this wise and necessary Act expresses it, *upon individuals*.

Intended order of the Chapter.

Having in the foregoing Chapter gone through the different sections of the Act, as they occur in their order, I shall follow the same system in digesting the various determinations of the Courts upon the different parts of the Act. It is not indeed my intent to give the reader a full report of each case, that has been decided upon the Statute, but to draw his attention to the construction of the different provisions of it, which have determined and fixed their sense meaning and effect<sup>1</sup>.

<sup>1</sup> The Public is much indebted to Mr. Hunt for a very ample Collection of Cases on the Annuity Act, not only of those reported by others, but also of several Manuscript Cases never before published.

When

When we consider the complex and comprehensive nature of this *first section* of the Act, it naturally occurs, that more points upon the different parts of this section have come before the Courts for their decision, than upon all the other sections of the Act collectively or separately taken. It is in fact the substance of the whole Act, excepting the sixth clause, which relates to the contracts with minors; for all the other clauses are qualifications or modifications of or exceptions to this first section.

PART II.  
CHAP. IV.

Nature of  
the first sec-  
tion of the  
Act.

I know not how to introduce with more effect these legal and authentic constructions put upon the Statute, than in the words of Lord Kenyon, before whom most of the cases have received their determination. In *Rumball v. Murray*<sup>1</sup>, his Lordship said: "As the Annuity Act is an  
"extremely remedial Law, the Courts ought to  
"give effect to every word of it, in order to  
"meet the mischiefs intended to be remedied." And again in *Dann on dem of Dolman v. Dolman*<sup>2</sup>, his Lordship said: "Many-cases have  
"been brought before the Court on the con-  
"struction of this Act of Parliament, which  
"have appeared to bear rather hard upon par-  
"ticular individuals; yet if they were set in op-  
"position to the benefits, which the public have

Opinions of  
Lord Ken-  
yon upon  
the general  
tendency of  
the Act.

<sup>1</sup> 3 Term Rep. 298.

<sup>2</sup> 6 Term Rep. 645.



PART II.  
CHAP. IV.

Every deed  
by which  
an Annuity  
is secured  
to be in-  
rolled.

“ derived from the Act, I believe that the ba-  
“ lance would be greatly in favour of the late  
“ ter.”

There have been numerous cases decided, by which it appears absolutely necessary, that every deed bond instrument or assurance, by which an Annuity is granted (or secured) must be inrolled, in so much, that the omission to set forth any one such deed, &c. in the memorial will be fatal. As in *Hood v. Burlton*<sup>1</sup>, Lord Commissioner Eyre said: “ It is manifestly the object  
“ of the Act to comprehend all manner of in-  
“ struments calculated to secure the payment of  
“ an Annuity. Though the language is, where-  
“ by an Annuity shall be granted, yet the con-  
“ struction ought to be, whereby it shall in any  
“ manner be secured to be paid: and there-  
“ fore if the Court thinks this an instrument,  
“ whereby an Annuity is secured to be paid,  
“ however it has been granted, all these instru-  
“ ments must be within the Act or there is an  
“ end of it.”

The scrupulous attention of the Courts to this requisition of the Act cannot be more strongly manifested, than in their setting aside several Annuities because their memorials did not set forth the warrants of attorney to confess judg-

<sup>1</sup> 2 Vez. jun. 34. Vid. also, 4 Bro. C. C. 124.

ment upon the bonds given for securing the Annuities, although the bond and the judgment itself may have been mentioned in the memorial: for there is certainly much reason in the argument against the necessity of stating the warrant of attorney in the memorial; that being merely an authority for entering up the judgment, after which it is *functus officio*. The point however was solemnly determined by the King's Bench in *Hopkins v. Waller*<sup>1</sup>; by the Common Pleas in *Davidson v. Lord Foley*<sup>2</sup>; and also by Lord Thurlow in Chancery after several days argument in *Davidson v. Lord Foley*<sup>3</sup>; where his Lordship said, "he should not be justified in determining so contrary to the opinion of a Court of Law, which in the case of *Hodges v. Money* in last Hillary Term (reported in 4 Term Rep. 500) had only held, that where the consideration was expressed in the bond, it need not be so in the warrant of attorney, but must be taken to have held *that the warrant of attorney was an assurance*, as otherwise, they would have contradicted the third section of the Act."

Cases proving the necessity of registering the warrant of attorney.

Amidst the vast variety of points determined in the complicated case of the *Duke of Bolton v.*

<sup>1</sup> 4 Term Rep. 463.

<sup>2</sup> 2 H. Black. 12.

<sup>3</sup> 3 Bro. Ch. Caf. 598.

PART II.  
CHAP. IV.Confirmed  
in Duke of  
Bolton v.  
Williams.

*Williams and others* the necessity of comprizing the warrant of attorney in the memorial was one. For said Lord Loughborough according to Mr. Vezey<sup>1</sup>, “All the different parts, the “bond, *warrant of attorney*, the bond from the “surety all make but one assurance. The “object is, that the assurance and all the “component parts, shall be set forth.” And according to Mr. Brown’s report of this case<sup>2</sup>, “With respect to the other Annuity (Samson’s) “the memorial recites the Annuity only to be “42l. and it does not state all the securities, “for with respect to the bond *and warrant of* “*attorney*, as it does not state the dates, it is as “no memorial.” The direct inference therefore is from this determination, that if the warrant of attorney be not as fully stated in the memorial as any other deed, the memorial will be defective, and consequently affect the whole transaction.

Securities  
given by the  
sureties to be  
registered.

It is not only necessary, that *every* deed executed by the immediate grantor of the Annuity should be mentioned in the memorial, but that every other deed or assurance, though it be but a collateral security given by a third person should be equally set forth in the memorial: as

<sup>1</sup> 2 Vez. jun. 154.<sup>2</sup> 4 Bro. C. C. 313.



In the case of *Rosher v. Hurdis*<sup>1</sup> a bond entered into by some sureties for better securing an Annuity, that had been previously granted, though they had made the bond bear even date with the deeds, was holden by the Court necessary to be registered, for, said they, "the contrary construction would totally repeal the wise provisions of that Act of Parliament, the object of which was to disclose to the Public the whole of the Annuity transaction, and all the parties to it. This was an instrument to secure the payment of the Annuity, and it should have been registered: in many cases the deed of the surety is the most effective security. If we were to determine, that such an instrument as the one in question need not be registered, wherever fraud was intended, some nominal person would be brought forward as the ostensible party, and the real security would be concealed from the public eye."

It suffices not, that every *deed*, bond or assurance, by which an Annuity is granted or secured, should be set forth in the memorial, but each of them must be so mentioned in it, that by the memorial it shall appear, that they have reference to one and the same Annuity. Therefore in *Saunders v. Hardinge*<sup>2</sup>, Lord Kenyon,

The connection and relation of the deeds to appear upon the memorial.

<sup>1</sup> 5 Term Rep. 678.

<sup>2</sup> 5 Term Rep. 12.

after

PART II.  
CHAP. IV.

after expressing his reluctance to set aside the Annuity, because it appeared to him a fair transaction, added: "But we are to form a judgment on the public document directed by the Legislature; and as the Annuity secured by the bond may from the manner, in which it is there registered be different from the two several Annuities mentioned in the deed poll, this last judgment on the bond cannot be supported, &c. Had there been any words of reference in the memorial of the bond, the bond might have been supported; but there is nothing in the memorial to connect the one with the other."

Of registering the judgment.

The Court of King's Bench has determined, that the *judgment* entered upon a bond for securing an Annuity needs not to be comprized in the memorial, although the bond and the warrant must necessarily be so. It was therefore said per curiam, of a judgment in *Sherfon v. Oxlade*<sup>1</sup>, "This is not one of the assurances, which the Legislature intended should be inrolled. The contract for the Annuity was made by giving the bond and warrant of attorney to enter up judgment. Those were the securities, on which the party relied: and the Act is complied with by registering all the securities given by the parties." However the Court

<sup>1</sup> 4 Term Rep. 824.

added:

added: "If indeed the only security had been a judgment actually entered up, perhaps it would have come within the provisions of the Act." We are now concluded by this express decision. It appears however by what the Court added, that a judgment is of its nature such an assurance, as may in certain cases be within the provision of the Act. Now if the want of other securities could render the registry of a judgment necessary under the Act, it could only produce that effect, because the judgment was the assurance, by which the Annuity was granted or secured: but does the option or power of the grantee to enter up the judgment at his own time alter the nature of the judgment and make it cease to be that species of assurance, which is out of the provision of the Act? And is that a full statement of the transaction, which suppresses the principal remedy, to which the grantor may be subjected, which is an execution upon the judgment?

How far the judgment is an assurance within the Act.

Not only every deed, bond or other assurance, by which an Annuity is originally granted or secured must be registered, as we have seen, but every deed of assignment of a part of such original Annuity must be registered in like manner; each such assignment being in that respect considered as a fresh grant: although, where an Annuity properly registered is assigned over *in*

Of registering assignments of Annuity in part and in the whole.

*toto*



PART II.  
CHAP. IV.

*to* to another person, such deed of assignment needs not to be registered under the Act. The first part of this observation is settled by the case of the *Duke of Bolton v. Williams and others*, in which Mrs. Williams being entitled to an Annuity of 300l. for her life, had assigned parts of it to *Creswell* and *Sampson*, and upon a bill filed by the Duke of Bolton to know, to whom the arrears of the Annuity were to be paid, there being disputes between the representatives of the assignees and Mrs. Williams, and objections having been taken to the assignments on account of their not being properly registered, Lord Thurlow in May 1792 declared, that the deeds, under which the representatives of the assignees claimed were void for want of inrolment; from which decree there was a petition for rehearing, and after several elaborate arguments Lord Loughborough premising <sup>1</sup> “that through the  
“course of these causes having paid great atten-  
“tion to the arguments, he had no doubt in his  
“own mind, that the decree was right, and he  
“accordingly affirmed it in June 1793.”

An assign-  
ment of a  
whole An-  
nuity not to  
be regis-  
tered.

Notwithstanding these partial assignments or derivative Annuities, which are as to the grantors of them fresh grants, and therefore to be registered under the provision and spirit of the Act,

<sup>1</sup> 2 Vez. 151.

yet we see by the case of *Dixon v. Birch and Teyte*<sup>1</sup> that the Act does not require an assignment of an Annuity properly registered to be comprized in a fresh memorial; for here *Dixon* had assigned to *Cousins* and the assignment was not registered, and on this omission, the application to the Court to vacate the Annuity, &c. was founded. But the Court held, that as there was a memorial of the original securities inrolled, the object of the Statute, *which was the protection of the grantor* was fully complied with, and it was not necessary to inroll the assignment. A similar case had been decided in the preceding Hilary Term 1794 in the King's Bench in *Bromley v. Greathead*<sup>2</sup>, when the Court intimated a very clear opinion, that there was no necessity for a second inrolment in that case, and Lord Kenyon Ch. J. said, that *neither the words nor the spirit of the Act required it.*

What Lord Loughborough said in *Duke of Bolton v. Williams and others*<sup>3</sup> viz. that, *with respect to the bond and warrant of attorney, as it does not state the dates, it is no memorial*, is to be looked upon as a judicial decision, that the omission of the date of any one deed in that memorial would render it defective: which point was di-

The date of each deed to be mentioned.

<sup>1</sup> H. Black. 307.

<sup>2</sup> Manuscript Case given by Mr. Hunt, 2d. edit. p. 45.

<sup>3</sup> 4 Bro. C. C. 310.

PART II.  
CHAP. IV.

rectly determined in *Downes v. Packurst*<sup>1</sup> in the Common Pleas, where the Court set aside a judgment to secure an Annuity, because the date of the warrant of attorney was not stated in the memorial as well as the date of the judgment. In the case of *Hart v. Lovelace*<sup>2</sup> last Hillary Term in the Court of King's Bench Mr. Gibbs on behalf of the defendant stated four objections to the memorial. 1<sup>o</sup>. *That no date is therein given to the bond and warrant of attorney.* He was stopped by the Court, as he began to enforce his objections, and they set aside the Annuity upon another ground without touching upon this objection.

Of naming  
all the wit-  
nesses in the  
memorial.

The objection<sup>3</sup> which Lord Kenyon in that case said, he could not get over, was that the names of the witnesses to each of the deeds are not set forth with sufficient accuracy in the memorial. "The Legislature," added his Lordship, "in framing this Act of Parliament intended, "that every circumstance relating to the An-  
"nuity should be disclosed; and more informa-

<sup>1</sup> 2 H. Black. 13. cited by Counsel in *Davidson v. Feky*.

<sup>2</sup> 6 Term Rep. 471.

<sup>3</sup> The objection is expressed by the Reporter: "That it does  
"not appear with sufficient distinctness, who were the witnes-  
"ses to the indenture or to the bond or warrant of attorney:  
"the memorial only shewing, that all the instruments were  
"attested by A. B. &c. or one of them."



"tion is likely to be collected on the subject, if  
 "all the witnesses to the different instruments  
 "be set forth in the memorial, than if only some  
 "of their names be there mentioned: for some  
 "important parts of the transaction may per-  
 "haps be known only to the witnesses to one of  
 "the instruments. In this memorial the names  
 "of the witnesses are not distinctly set forth: if  
 "we allow this mode of stating their names to be  
 "sufficient, it will be difficult to draw the line."

In the case of *Hood v. Burlton*<sup>1</sup> certain funds were settled upon the marriage of *Ferdinand and Diana Burlton* to the separate use of *Diana* for her life: of which dividends she sold 50l. to *Richard Gildart* in consideration of 400l. and assigned certain funds to *John Hood* in trust out of the dividends to pay 50l. per annum during the life of *Diana* to *Lucy Gildart* for her separate use, then to *Richard Gildart* her husband, in case he survived her with divers other trusts not relating to *Gildart* or his wife. The memorial of this transaction took notice of the assignment of the stock to *Hood* by *Diana* and *Ferdinand* for the life of *Diana*, and the trust to pay 50l. to *Lucy Gildart* at and for the sum of 400l. It also noticed a bond and warrant of attorney from *Ferdinand Burlton*, but stated nothing of the contingent trust or interest of *Richard Gildart*. And

Of men-  
tioning all  
the trusts of  
the deeds.

<sup>1</sup> 2 Vez. jun. 29. 4 Bro. C. C. 121.

PART II.  
CHAP. IV.

upon a bill filed by *Hood* to have all the trusts of the deed of assignment carried into effect, and the defendants insisting, that this omission to state the trust or interest of *Richard Gildart* rendered the memorial defective, Lord Commissioner Eyre after noticing these facts<sup>1</sup> said, “The direction of the Act is plain and capable of being pursued: and there is no good reason why the full extent of the benefit intended should not be stated. As all the persons inte-

<sup>1</sup> His Lordship also expressed his reluctance to set aside this Annuity, because it appeared a very fair transaction: *Gildart* having given two years purchase above the market price. But public policy required, that however fair this transaction might be, yet for the general security of the public, it must be under severe restrictions, which must be strictly conformed to by all; as well people who mean to act fairly, as those who are the immediate objects of the Act. Lord Commissioner *Asshurst* also expressed his sorrow, that he was under the necessity of dismissing the bill, as the transaction appeared to him fair and honourable; but this Act was made chiefly to protect people having annual life interests, as being most likely to get into bad hands, and therefore though in the present instance the plaintiff has treated fairly, he must be bound by those rules meant to guard honest people against fraud.—If Mr. Vezey be accurate in stating, that *the funds were accordingly transferred to John Hood*, it appears singular, that neither the Court nor Counsel perceived, that this Annuity was a case excepted out of the Act by the eighth section, as secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said Annuity.

rested

"rested are not stated in the memorial, I am of opinion, that a sufficient memorial within the Act has *not* been registered, and therefore that the Annuity is void; and the bill must be dismissed." And Lord Commissioner *Asburst* added: "The question is, whether the Act has been pursued? The memorial ought to set forth the dates, sums, witnesses, and all these things: and *if it is with a trust*, the parties beneficially interested. This is not done in this case, because no notice is taken of *Richard Gildart*: these acts must be literally pursued; therefore I think this is not a good memorial within the Act."

In *Tolderoy and Allan*<sup>1</sup> objections were urged against a memorial, that did not state all the trusts declared by the Annuity deed of the lands, which were demised for better securing the Annuity. But the Court thought "that the Legislature did not mean to require the parties to mention all the trusts, which were a lien on the estate independently of the Annuity, as to pay taxes chief rents &c., but only those trusts, which were created in consequence of the Annuity being granted."

Pointed as this decision of the Court of King's Bench in Hillary Term 1794 appears, that such trusts of the deed need only to be stated in the

Trusts to be  
confined to  
the Annuity.

Decisions  
upon all the  
trusts being  
set forth ir-  
reconcil-  
able.

<sup>1</sup> 5 Term Rep. 480.



PART II.  
CHAP. IV.

memorial, as affect the Annuity granted or secured by the deed creating the trusts, yet in the following Trinity Term the same Court, either overruled the case of *Tolderoy v. Allan* or judicially declared, that it was not faithfully reported. For in *Dann on the demise of Dolman v. Dolman*, upon that part of the case, which related to the omission to state in the memorial certain trusts of the deed, which affected not the Annuity then before the Court, Lord Kenyon and each of the other Judges delivered their opinions very minutely and explicitly ; yet in such a manner, that I cannot help considering them as completely overturning their former opinion, as it is reported in *Tolderoy v. Allan* : but as Lord Kenyon drew an express difference between the two, I am to presume, that some ground of difference was taken, which does not appear upon the face of the report. The inconsistency of the two decisions appears too glaring to admit of a comment. In the former the Court said, that *the Legislature did not mean to require the parties to mention all the trusts, that were a lien on the estate independently of the Annuity, but only those trusts, that were created in consequence of the Annuity being granted.*

In the latter Lord Kenyon said, “ Now if this “ memorial does not set forth *all the trusts of the “ deed*, we cannot fritter away the words of the

“ Statute,

“ Statute and say, that the deed is only void for  
 “ some purpose, when the Act has declared in  
 “ express terms, that it is void to all intents and  
 “ purposes.” And in commending the ingenuity  
 of the defendant’s counsel, his Lordship added,  
 that “ the result of it is merely this, that perhaps  
 “ it may be proper to apply to the Legislature to  
 “ relax the severity of the present Law and to  
 “ confine it’s operation to *those parts of the deed*  
 “ *only, which affect the Annuity* : but as long as  
 “ the Act of Parliament is to guide our conduct,  
 “ we cannot get rid of an objection like the pre-  
 “ sent, which is founded on the positive words  
 “ of the Statute<sup>1</sup>.” Ashurst J. said, “ the An-  
 “ nuity Act requires, that all the trusts shall be dis-  
 “ closed in the memorial. That was a condition

<sup>1</sup> Lord Kenyon ended his opinion by observing that *this case was widely different from that of Toldervey v. Allan, because there all the trusts were set forth in the memorial.* Now whether all the trusts declared by the deed of demise in that case were or were not actually set forth in the memorial seems immaterial to consider, because the Court cut up the doubt by declaring that *all the trusts* of the deed needed not to be set forth in the memorial, but only those trusts, that were created in consequence of the Annuity being granted : and it instanced those of taxes, chief rents, &c. as a lien upon the estate independently of the Annuity. Within the same rule and principle are to be comprized all private incumbrances and limitations over expectant upon the determination of the life estate, out of which the Annuity is issuing, that pre-existed the grant of it, for they evidently are liens upon the estate independently of the Annuity.

B b 2

“ imposed

PART II.  
CHAP. IV.

Even trusts  
that affect  
not the An-  
nuity to be  
specified.

“imposed by the Legislature, without complying  
“with which the deed is a nullity.” *Grose J.*  
concurring in opinion and observed, that “this  
“was one of the first attempts to explain away  
“this part of the Annuity Act: but that was a  
“very wise and politic Law, and he was by no  
“means inclined to begin to abridge it’s opera-  
“tion.” And *Lawrence J.* remarked, that “if  
“the name of any one *cestuy que trust* be not  
“disclosed in the memorial, that is sufficient to  
“avoid the whole deed.” Now in this case  
every other purpose except *Toten’s* Annuity, for  
which *Griffith* was a trustee, was a lien either  
upon the person or estate of *Dolman* independ-  
ently of the Annuity granted to *Toten*.

By this determination we learn the construc-  
tion of this part of the first section of the An-  
nuity Act to be, that if a deed, by which an  
Annuity is granted or secured contain other  
trusts than those, which affect the Annuity, they  
as well as those, which do affect the Annuity  
must be specified in the memorial, or the deed  
will be a nullity. After stretching the rigor of  
this Act to the extent of avoiding an Annuity  
because the memorial did not set forth some  
trusts of a deed securing it, which did not at all  
affect the Annuity, we shall be little surprised at  
the punctilious severity, with which the Courts  
have supported the observance of other condi-  
tions



tions of the Act, and particularly of setting forth in the memorial the consideration of granting the Annuity.

PART II.  
CHAP. IV.

Of the consideration.

More cases have been decided upon this point, than upon any other part of the Act: and for the satisfaction of my readers I shall endeavour to throw them into that order of classes, that arises naturally upon the general idea of the consideration of a deed of sale: that will first suggest to us the payment of the consideration in money or cash. 2°. The payment in any other mode, as by liquidation of a subsisting debt, &c. 3°. It will teach us, that some conditions or agreements between the parties may make a part of the consideration, which do not consist in the payment of any money. And 4°. how these different matters are to be expressed in the memorial directed to be made of them.

1°. In *Rumball v. Murray and others*<sup>1</sup> the consideration was stated in the memorial to be *in money*, whereas it was paid partly by a banker's check and partly by a promissory note. And Lord Kenyon Ch. J. said, "As the Annuity Act "is an extremely remedial Law, the Court "ought to give effect to every word of it, in "order to meet the mischiefs intended to be remedied. And by giving effect to every word,

Of bankers' checks and promissory notes.

<sup>1</sup> 3 Term Rep. 298.

PART II.  
CHAP. IV.

“ the argument <sup>1</sup>, which has been urged against  
 “ the rule, is answered. The Act directs, that  
 “ in the memorial the consideration *or considera-*  
 “ *tions* shall be inserted: now I do not know  
 “ what meaning the latter word can have, unless  
 “ every thing, which forms a part of the confi-  
 “ deration was to be particularly specified. I  
 “ agree with the construction put at the Bar,  
 “ that money is mentioned in the Act as contra-  
 “ distinguished from *goods*, and so far *notes* when  
 “ paid, are money within the meaning of the  
 “ Act: but still the dates and other particulars  
 “ of those notes should be set out: otherwise  
 “ the Court cannot see, whether a full confide-  
 “ ration for the Annuity was or was not given:  
 “ for if they were payable at a distant time and  
 “ no allowance made, the true consideration  
 “ would not appear upon the memorial.” What  
 Buller J. said upon this case is also very import-  
 ant to the general subject under my considera-  
 tion. “ I think this point has been already de-  
 “ termined. And I think the question arose  
 “ soon after the passing of the Annuity Act, in  
 “ deciding which the Court had regard to the

<sup>2</sup> This argument was, that notes when paid were to be looked upon as money, and that such considerations were valid by the very nature of the fourth clause of the Act, which provides for the case of the notes not being paid when due.

"cases, which had arisen before the Act on mo-  
 "tions to set aside judgments on bonds and war-  
 "rants of attorney to secure Annuities on ac-  
 "count of usurious considerations. They were  
 "frequently granted in consideration of notes  
 "payable at a distant day, which were taken as  
 "ready money, and therefore it was a species of  
 "Usury and in such cases the Court set the  
 "Annuities aside. Upon that Act it has been  
 "held, that the whole consideration must be  
 "set out in the memorial, and if any part of it  
 "consist in notes, they must be accurately set  
 "forth. It should appear, that those identical notes  
 "were given for the Annuity; because, in case  
 "they are not paid, the grantor would be entitled  
 "to set aside the Annuity under another clause  
 "of the Act, and it would by that means be  
 "ascertained, that those were the notes given  
 "for the Annuity; and if they are not set out,  
 "the burden of proof, that they were the con-  
 "sideration of the Annuity, would be thrown  
 "on the grantor, which in many cases might be  
 "difficult."

In *Wright v. Reede* an objection was taken  
 against a memorial, that mentioned the conside-  
 ration having been paid *in money*, when in fact  
 it was paid partly in cash and partly in bank  
 notes: and the Court held that payment in bank  
 notes, was a payment in money, particularly if

Bank notes  
 taken as  
 cash.



PART II.  
CHAP. IV.

Of specifying the mode of payment.

not objected to at the time<sup>1</sup>. And the same point was expressly confirmed in *Cousins v. Thomson*<sup>2</sup>.

The chief point, upon which the case of *Sowerby v. Harris*<sup>3</sup> turned, was whether the consideration were as effectually set forth in the memorial by way of recital, as by averment of the positive fact, which the Court held to be a matter of indifference: but yet as the 2100l. consideration-money was paid to Harris by Sowerby by a check on Sowerby's banker, out of which the banker retained 600l. due to him from Harris, and the memorial stated generally, that the money was in fact paid, without noticing the manner how, and the Court discharged the rule with costs, it appears in some measure to contradict the foregoing cases by putting a banker's check upon the footing of a bank note or cash. Whereas it appears, that every thing said by the

<sup>1</sup> 3 Term Rep. 554. Vid. the case of *Millar v. Race*, 1 Bur. 452, where it was clearly holden that bank notes were paid and received as money, as cash. Vid. also *Austin v. Executors of Sir William Dodwell*, Hil. 1729. 1 Eq. Ca. Ab. 319, where Lord King said, that a tender of a bank note was not strictly speaking a legal tender: but as the plaintiff offered to turn it into money, that made it a good tender.

<sup>2</sup> 6 Term Rep. 335.

<sup>3</sup> 4 Term Rep. 494.

Courts of promissory notes in *Rumball v. Murray* applies in reason and principle to the banker's check : for until it be actually paid, it remains uncertain, whether the banker will honor the draft either *in toto* or *in parte* : and the deeds having been probably executed before the draft was tendered for payment, it cannot be said to be the true statement of the consideration paid by a banker's check and *which was in fact paid*, when at the time of executing the deed for that very consideration it was not *in fact paid*, and peradventure it might never be paid. Principles are not to be merely adapted to actual cases : the Court here found the transaction fair and the money duly paid : but if the case had been otherwise, and the banker had refused payment of the draft on having no effects of the drawer in hand, or from derangement in his own affairs, (for even bankers have failed) would not every reason apply to this draft, which Lord Kenyon applied to drafts payable at a distant time ? Then would it not become necessary to set forth in the memorial, that the consideration was paid by a check on a banker ?

In support of this necessity of specifying in the memorial how the consideration was paid I refer to the case of *Berry v. Bentley*<sup>1</sup>, where the memorial stated, that the consideration-money

Of stating  
the actual  
payment of  
a banker's  
check.

<sup>1</sup> 6 Term Rep. 690. Pasch. 1796.

(700l.) was paid by a promissory note drawn by *Hamersley* and payable at *Hamersley Morland and Co.'s*, and which said sum so secured has been since paid. The objection was, that the memorial did not set forth when the note was payable, whether immediately or at a distant day: for if at a distant day, it was not worth 700l. by reason of the discount. And though it were stated in the affidavit in answer to the rule, that it was a banker's check payable immediately, the Court said, that the memorial should contain every thing necessary to shew, that the transaction was fair, and that the consideration money had been paid; and they thought, that this case was decided by that of *Rumball v. Murray*. There is however this difference between them, that *here* the memorial recited the actual payment of the draught, and *there* it did not mention the actual payment either of the banker's check or promissory notes. It appears moreover, that the actual payment was more specifically stated in the memorial of *Bentley's Annuity*, than in that of *Harris*. This last decision in *Berry v. Bentley* seems to supersede the grounds of the determination in *Sowerby and Harris* in as much, as the Court acted upon this part of the case. Yet it must be allowed, that this was not the principal point before them, or that, upon which they actually decided: though I do not conceive, that



that they could in that case have discharged the rule with costs, unless they had been of opinion, that it was *not* necessary to set forth in the memorial the fact of the payment being made by a banker's check.

2°. In many fair and honorable transactions, the consideration may be paid either wholly or partly in money or by way of set-off or liquidation of a debt, or indeed wholly by this latter or many other modes: but in which-ever way it is paid, the Act requires, that it shall be specifically set forth in the memorial.

In *Cox v. Wright*<sup>1</sup>, in an Annuity granted before the Annuity Act, objections were made to the memorial, which contained the same description of the consideration as the deeds, but not the true consideration as really paid: for the fact was, that instead of 500*l.* mentioned in the deed to have been paid, 350*l.* were only paid and 150*l.* were detained by the grantee for a year and half accruing Annuity. The deeds and the memorial stated that 500*l.* were paid as the consideration. And the question was, whether it were a proper memorial under the Act? And the Court found the memorial defective upon this ground.

Consideration falsely stated in the memorial vacates the deed.

So in *Fenner v. Evans*<sup>2</sup> the memorial men-

<sup>1</sup> 22 Geo. III. B. R. manuscript apud Hunt 69.

<sup>2</sup> 1 Term Rep. 267.

tioned

PART II.  
CHAP. IV.

tioned the consideration to be 1000l. when in fact 700l. only were paid and a *respondentia* bond given for 271l. and a deduction of 29l. was made for law-charges: and the rule to set aside the *scire facias* and all the subsequent proceedings was made absolute, because the real consideration of the Annuity did not appear in the memorial. The like opinion the Court of King's Bench seems to have expressed in *Watts v. Millard*,<sup>1</sup> where the memorial set forth as the consideration of Millard's granting an Annuity of 30l. to Watt the payment of 180l. by Watt to Millard, whereas in fact he only paid him 130l. and retained with Millard's consent 50l. as a debt due to Watts from Atkinson, who was the attorney of both parties in this transaction. The memorial was declared defective from not specifically stating this retention of the 50l. as one of the terms of the contract and making a part of the consideration.

Where a part of the consideration was for goods falsely set forth.

Upon the like principle the Court of Common Pleas in *Kirkman v. Price*<sup>2</sup> ordered the Annuity deed (which was an assignment of the defendant's pay as a lieutenant in the navy) bond and warrant of attorney to be delivered up to be cancelled, because the memorial only stated

<sup>1</sup> 5 Term Rep. 598.

<sup>2</sup> 1 H. Black. 309.

generally, that 160l. had been paid for the consideration of granting the Annuity; whereas 99l. 14s. 6d. had been previously lent to the defendant; twelve guineas were retained by the plaintiff for the expences of the deeds, and the remainder of the 160l. paid down at the execution of the deeds. The same Court in *Shove and Webb*<sup>1</sup> had under the like circumstances acted in the same manner, because the memorial had stated generally, that 118l. 17s. 3d. had been paid in money, whereas 71l. 17s. 6d. only were actually paid, 46l. 19s. and 9d. being a debt due for goods sold to the defendant. And Judge Ashurst in the King's Bench in an *assumpsit* for the price of these goods said, that "the Court of Common Pleas had very properly "set aside and vacated the security, which they "found themselves bound to do under the express words of the statute." The King's Bench set aside the Annuity in *Jaques v. Withy*<sup>2</sup>, because the memorial stated the consideration to be 340l. 10s. paid to the plaintiff, whereas the true consideration was a judgment recovered against the plaintiff in B. R. for that sum: and in *Washburn v. Birch*<sup>3</sup> the memorial stated the consideration to be so much money paid,

<sup>1</sup> 1 Term Rep. 732.<sup>2</sup> 1 Term Rep. 557.<sup>3</sup> 5 Term Rep. 472.

when



PART II.  
CHAP. IV.

Of paying  
the conside-  
ration at dif-  
ferent times.

when in fact part of the consideration was the giving up a former Annuity.

In arguing the case of *Washburn v. Birch* the counsel urged against the rule the two cases of *Symmonds v. Mortimer*<sup>1</sup> and *ex parte Fallon*<sup>2</sup>; which in some points of view might be considered to contradict the principles of the foregoing cases. But said Lord Kenyon, "This Annuity cannot be supported upon the authority of either of these cases. In the former money was paid at different times not for the purchase of different Annuities, but it was intended from the beginning of that transaction, that there should be only one Annuity: it was a floating security, and when the last sum was paid by the grantee, it was considered as completing the purchase of that one Annuity. The whole was a money consideration, and properly stated as such in the memorial. In the other case cited, the consideration was truly set forth in the memorial, as consisting of a sum of money and of giving up of a former Annuity. Whereas in this case, the whole of the consideration is stated as so much money paid at the time by the grantee to the grantor."

<sup>1</sup> 5 T. Rep. 139.

<sup>2</sup> 5 T. Rep. 283.

3°. Not only the money agreed or contracted to be paid as the price of the Annuity is to be considered as part of the consideration and therefore to be set forth in the memorial, but every other part of the contract, which can affect the nature or value of the Annuity granted: as where in *Sawyer v. Bunce*<sup>1</sup> a special agreement and covenant was indorsed on the deed to enable the grantor to redeem at a stated price, because this agreement was not mentioned in the memorial the Court expressed a strong opinion, that the Annuity deeds were void on this score: but the matter terminated in a compromise. And in the case last Trinity Term of *Steadman v. Purchase*<sup>2</sup> where an indorsed agreement for redemption was omitted in the memorial, the Court made the rule absolute to set aside the judgment upon the same ground.

To shew however, that *lex non curat minima*, and that the spirit of the Act is not to be altogether abandoned even for the letter, the Court of King's Bench rejected as trivial three objections made to a memorial of an Annuity under this Act, in the case of *Ince v. Everard*<sup>3</sup> viz. 1°. that the memorial did not contain the nominal

PART II.  
CHAP. IV.

Of the terms of the contract making a part of the consideration.

Clerical errors and nominal consideration of res. not to be set forth.

<sup>1</sup> Manuscript case in Hunt 2d edition 74. in R. R. Pasch. 35 Geo. III.

<sup>2</sup> 6 Term Rep. 737.

<sup>3</sup> 6 Term Rep. 545.

confide-

PART II.  
CHAP. IV.

Of the law-  
charges be-  
coming a  
part of the  
considera-  
tion.

consideration of 10s. ; 2<sup>o</sup>, that it did not specify, that the Annuity was payable for the portion of time from the last quarter day to the death of the Annuitant ; and 3<sup>o</sup>, that it contained some clerical errors in a name and in figures.

Having in the foregoing Chapter hazarded a suggestion, that the payment of the law-charges and expences of the Annuity became a part of the contract, and therefore of the consideration and consequently that they ought to be set forth in the memorial, it is now incumbent upon me to shew how far the Courts have noticed or afforded grounds to maintain this opinion. I do not find, that the question ever came directly before the Court. The circumstance however has so far come before them incidentally, as to enable us to collect their general sense and opinion upon the point.

*Fenner v. Evans*, a case upon the law-charges.

The case of *Fenner v. Evans*<sup>1</sup> must, if we consider it attentively be brought to bear upon this point : for although the principal question before the Court were, whether a *scire facias* were an action within the meaning of the 2d section of the Act, which we shall presently examine, yet would it have been useless to proceed to consider this question, unless the real consideration of granting the Annuity had not been fully stated in the memorial : the fundamental ground

<sup>1</sup> 1 Term Rep. 265.

there-



therefore of the judgment in this case was the defect in the memorial from its not stating fully and truly the consideration: and in what did that defect consist? Namely, that the memorial stated, that the plaintiff had received 1000*l.* as the consideration for granting the Annuity: whereas in fact, he only received 700*l.* in money; and a *respondentia* bond for 27*l.* and there was a deduction of 29*l.* for law charges. Now as the judgment of the Court presupposed a defective memorial, which in fact they also judged of, we must necessarily conclude, that the Court found this memorial defective, as much from not specifying the mode of accounting for the payment of that part of the consideration, which went to satisfy the law charges, as of that, which made up the amount of the *respondentia* bond. From this decision therefore it follows, that wherever the law charges make part of the consideration, they must be set forth in the memorial, and that they then make a part of the consideration when the grantee either retains the amount of his own agent's charges, or throws the payment of them upon the grantor.

The case of *Kirkman v. Price*<sup>1</sup> appears also conclusive, that the payment of the law charges makes a part of the contract or agreement and

*Kirkman  
v. Price.*

<sup>1</sup> 1 H. Black. 309.

PART II.  
CHAP. IV.

therefore becomes a part of the consideration; for in a motion to shew cause why an Annuity should not be set aside because the memorial did not fully and truly set forth the payment of the consideration by stating generally, that the Annuity was granted for the consideration of 160l. when in fact 99l. 14s. 6d. had been previously lent to the defendant upon promissory notes, which the plaintiff gave up at the time of executing the securities and allowing twelve guineas for the expences of the deeds, paid only the remainder of the consideration in money: and the Court made the rule absolute; holding clearly, that the particulars of the consideration were not sufficiently specified. Yet the amount of the law charges, if not allowed, either did or might have made the difference of twelve guineas in the consideration.

*Bolton v. Williams*, a strong case on the law charges.

In *Bolton v. Williams* the sum of 2000l. the whole consideration for an Annuity of 250l. granted by *Mary Charlotte Williams* to *Creswell* for her Life out of a Rent Charge of 300l. were thus stated in the memorial to have been paid, viz. 1126l. 7s. to *Ardjoise*, and 534l. to *Dubourg*, by direction of *Mary Charlotte Williams*, and 339l. 13s. to *Mary Charlotte Williams*, &c. making together the sum of 2000l. which were paid in notes of the Bank of England: in like manner the consideration of another Annuity of

42l. 10s. out of the said Rent Charge of 300l. which was granted to *Samson* for the Life of the said *Mary Charlotte Williams*, viz. 297l. 10s. were stated in the memorial to have been paid to her in notes of the Bank of England.

It appeared in evidence in this cause, that *Creswell* had employed *Powell* to lay out a sum of money in Annuities, and that upon his having advertised in the papers, *Bindley* applied to him on behalf of *Mary Charlotte Williams* to sell this first Annuity of 250l. to *Creswell*, and afterwards in like manner the other Annuity of 42l. 10s. with 6d. in the pound salary, which made 50l. for receiving and paying over the whole Rent Charge of 300l. which for that purpose was assigned over to *Samson*. The two principal objections to the memorial were, that the consideration could not be truly set forth, as it was impossible, that these broken sums could have been paid in bank notes: and that *Mary Charlotte Williams* did not receive as much as the sum stated. The other objections were that the consideration of *Creswell's* Annuity was not stated to have been paid by *Jenkins* for *Creswell*: that *Samson's* Annuity was in fact 50l. and not merely 42l. 10s. as stated: that the trustee of the Rent Charge of 300l. for *Mary Charlotte Williams* was not stated as trustee *pro tanto* for *Samson*: and that the bond and warrant of attorney were not sufficiently



ciently described. As to the first objection Lord Loughborough said, that it did not apply to Creswell's Annuity: "for the 2000l. might have been paid down in bank notes and the parties might have broken them afterwards."

In the Annuity of *Creswell* it appeared to the Court, that *Mary Charlotte Williams* had been obliged to pay for law charges out of the 2000l. 15l. to *Balfour* the attorney of *Dubourg*, 31l. to *Palmer* whom *Creswell* by his agent insisted upon employing to draw the deeds and 80l. to *Powell*. *Mary Charlotte Williams* objected to pay *Palmer* in particular, alledging, that she had agreed to pay 80l. to *Powell*, who was the only person employed by her in the business: but she was compelled to pay these several sums out of her purchase-money, and she then executed the deeds.

Lord Thurlow's decree affirmed.

From Mr. Browne's report of this case it seems, that the omission to set forth these different payments out of the purchase money was the ground of Lord Thurlow's decreeing on the 24th of May 1792, that the assignment to *Creswell* was void, *for want of the enrolment of a proper memorial thereof*. For the only objections, which he reports to have been made against this memorial, were, that no mention is made of the payments to *Powell Balfour and Palmer*, and that the broken sums were paid in bank notes. Lord Lough-

Loughborough, as I have before observed, placed no force in the objection of the bank notes; but as he confirmed the decree of Lord Thurlow, it must be considered to have been affirmed on the same grounds, on which it was made. But let us see what Lord Loughborough himself is reported to have said upon this very point: and by that we shall be the better enabled to conclude whether or no, the payment by the grantor of the law charges to the agent attorney or scrivener of the grantee must be set forth in the memorial, in order to comply with the requisitions of the Annuity Act.

Mr. Browne is shorter in his report of Lord Loughborough's decree than Mr. Vezey: as to this part of it he says<sup>1</sup>: "The manner of the transaction was, that *Ardesoif* and *Dubourg* were paid their demands and *Mrs. Williams* instead of being paid the sum stated in the memorial was actually paid only 213l. for 80l. was paid out of her money to *Powell* 15l. to *Balfour* and 30l. to *Palmer*. There is no evidence of an agreement between *Mrs. Williams* and *Creswell* that she should pay his agent; so *Palmer's* charge was *Creswell's* debt, not *Mrs. Williams's*."

Mr. Brown's  
report of it.

Mr. Vezey says<sup>2</sup>, "The manner, in which

<sup>1</sup> 4 Bro. C. C. 309.

<sup>2</sup> 2 Vez. 153.

PART II.  
CHAP. IV.Mr. Vezey's report  
of it.

“ the consideration appears to have been paid,  
 “ in fact was, that *Ardesoif* was paid all, that he  
 “ claimed ; so was *Dubourg* ; but *Mrs. Williams*  
 “ instead of being paid the sum of 339l. 13s.  
 “ stated to have been paid to her received bene-  
 “ ficially a much less sum ; 80l. having been at  
 “ the time dissipated in the expences by the pay-  
 “ ment to *Powell*, 15l. being paid to *Balfour*,  
 “ and 31l. 10s. to *Palmer* upon a bill then pro-  
 “ duced. There is no evidence of any terms of  
 “ the agreement with *Creswell*, except what the  
 “ deed indicates. That indicates that the 2000l.  
 “ was to be paid for the benefit of *Mrs. Wil-*  
 “ *liams*, as I have stated. The memorial says  
 “ it was so paid.

“ The original agreement we know nothing  
 “ of but from the deed itself. How has that  
 “ sum of 2000l. been paid to her use ? Just at  
 “ the time, at the moment the money was pay-  
 “ ing, *Palmer* brings his bill. There is no evi-  
 “ dence at all, that it was part of the agreement,  
 “ that *Creswell's* attorney should be paid by her.  
 “ On inspecting the bill, the charges seem pro-  
 “ per : but they are against *Creswell*. In the  
 “ course of this business the money, he has re-  
 “ ceived, is to the use of *Creswell*. Though that  
 “ sum cannot be said to be literally retained by  
 “ *Creswell*, yet it was deducted out of the sum,  
 “ which upon the face of the transaction was  
 “ all



“all to be applied to her use. Suppose it fair  
 “and that there was no sudden imposition, but  
 “that it was part of the agreement, it ought to  
 “be stated, for instead of receiving 2000l. there  
 “is a deduction of what in the ordinary course  
 “of the transaction would fall on *Creswell*.  
 “Therefore the proposition in the decree is true,  
 “that the deed is void for want of enrolment of  
 “a proper memorial.”

Although the case of *Broomhead v. Eyre*<sup>1</sup> turned chiefly upon retaining or returning a part of the consideration under the fourth section of the Act, yet enough was said by the Court in that case upon the law charges making a part of the consideration to authorize me to class it with the foregoing cases, which confirm my opinion upon this important question to most sufferers under hard Annuity bargains. Two objections were taken to this Annuity: the first was that the consideration was not paid according to the fourth section of the Act: the second, that it was improperly stated in the memorial. It appeared to the Court, that the consideration-money (600l.) was paid to the defendant: but that 19l. 11s. 4d. were deducted to pay R. Woodgate's bill and 3l. were paid for procuration-money. The memorial stated the consideration

Another  
 case upon  
 law charges.

<sup>1</sup> 5 T. Rep. 597. and rather more largely from a Manuscript Case in Mr. Hunt's useful Collection. 2d edit. 159.

PART II.  
CHAP. IV.

of 600l. to have been paid to the defendant; and took no notice of Woodgate's deduction for his bill and procuration-money. *Broomhead* was a trustee for *Woodgate*, who really advanced the consideration. And his bill of charges was paid immediately back out of the consideration-money. The Court here said amongst other things: that "*the purchaser of the Annuity ought to pay for the memorial, so that if it was charged or any other improper or exorbitant charges were made by the purchaser under colour of his being a scrivener (the same must hold of the real scrivener of a purchaser) and he deducted those charges (the same I presume, if in the other case he threw them upon the vendor) out of the consideration-money, which he advanced himself, it certainly was returning money within the fourth clause of the Act. That here the 19l. 11s. 4d. was a very unreasonable and improper charge, and when those exorbitant items were deducted out of it, it reduced the consideration to 58cl. 8s. 8d.: but the memorial states it to be 600l. so that at all events it was improperly stated in the memorial.*"

Consideration needs only to be once mentioned in the memorial.

4<sup>o</sup>. We have still to consider how these different considerations are to be expressed in the memorial directed to be made of them. It has been therefore solemnly decided, that although

every deed, by which an Annuity is granted or secured must be specified in the memorial, yet it is not necessary, that the consideration should be mentioned in the memorial more than once. For said Lord Kenyon in *Hodges v. Money and Bailey*<sup>1</sup>: “As the Act of Parliament only required, that the memorial should contain the consideration of granting the Annuity, it would be absurd to repeat the same thing several times in the same memorial, though several deeds were given for securing the same Annuity, each of them expressing the consideration.” In *Cousins v. Thomson*<sup>2</sup> where the consideration of an Annuity of 200l. was only recited in the memorial to have been 1200l. it was objected against as insufficiently described. But the Court expressly gave it as their opinion, “that it was sufficient if the consideration of the Annuity appeared on the memorial, whether it were there stated as a fact or only recited: that independently of the decisions upon the subject, the reason of the Act of Parliament led to the same conclusion; for that the object of the Act was merely to give full notice of the whole transaction to the public, which might be as well conveyed in one form as another.”

<sup>1</sup> 4 Term Rep. 502.<sup>2</sup> 6 Term. Rep. 335.

Upon



## PART II.

## CHAP. IV.

Of the  
twenty days.

Upon that part of the first section of the Act, which directs the memorial to be registered within twenty days, the Courts have been very explicit in determining, that the twenty days are to be computed exclusively of the day, on which the deeds were executed. In the case *ex parte Fallon and Uxor*<sup>1</sup> where the deeds were executed on the 6th and the memorial registered on the 26th of the same month, it was urged, that it was not within the time required by the Statute. And Lord Kenyon said: "No doubt  
" can be entertained upon this objection. It  
" would be straining the words to construe the  
" twenty days all inclusively. Suppose the di-  
" rection of the Act had been to inroll the me-  
" morial within one day after the granting of  
" the Annuity, could it be pretended, that that  
" meant the same, as if it were said, that it  
" should be done on the same day, on which the  
" act was done? If not, neither can it be con-  
" strued inclusively, where a greater number of  
" days is allowed."

Whether all  
the deeds  
are avoided  
by the a-  
voidance of  
one.

There are few words throughout the whole Annuity Act, which are more important, or that have been more differently expounded, than these last words of the first section, *otherwise every such deed, bond, instrument or other assurance shall be null and void, &c.* It is reported to

<sup>1</sup> 5 T. Rep. 283.

have been repeatedly decided by the Court of King's Bench, viz. in *Willey v. Wheeler*, Trin. 31 G. III. and *ex parte Chester*, Pasch. 32 G. III. where one deed out of several, by which an Annuity was secured, had not been properly registered, that this particular deed only was avoided. And the Court was of this opinion, observing, "that the word *such* in the Annuity Act confined the operation of that clause to the particular deed, which was not truly recited in the memorial." It is singular however, that in the preceding Michaelmas Term, 32 Geo. III. the same Court in *Hopkins v. Waller* had made absolute a rule to set aside a judgment because the warrant of attorney had not been registered. This judgment was in fact contradictory of the other two: because according to the two former cases the rest of the securities might have stood, although the warrant of attorney were not registered: for an improper and irregular registry of a deed renders it as effectually void as the total omission to register it at all.

There can be no doubt, but that this case of *Hopkins v. Waller* is faithfully reported, for the Court of Common Pleas in *Davidson v. Foley and others*<sup>2</sup> withheld their judgment upon a similar

Contrariety  
of opinions.

<sup>1</sup> 4 Term Rep. 695.

<sup>2</sup> 2 H. Black. 12.

case,

PART II.  
CHAP. IV.

case, till they were acquainted with this decision of the King's Bench, and with which afterwards they fully concurred. But this Annuity Act must surely possess a very ductile and pliable quality to ground such a succession of opposite opinions of the same Court upon the same point. For in Michaelmas Term, 33 Geo. III. in *Saunders v. Hardinge*<sup>1</sup> Lord Kenyon having found one of the deeds securing the Annuity void from not having been properly registered said, "this  
" last judgment cannot be supported, but this  
" will leave the other securities still in force."

The point  
settled by  
Lord Lough-  
borough.

However this unaccountable oscillation of opinion has been now irrevocably fixed by the very accurate and solid determination of Lord Loughborough in *the Duke of Bolton v. Williams*<sup>2</sup>.  
" It has been said that the Court of King's  
" Bench had supposed, that if there is a defect in  
" one instrument, that will make only that par-  
" ticular defective instrument void, but that all  
" the others might be used. The quotations  
" from the Court of King's Bench turn out here  
" just as they used in the Court of Common  
" Pleas: they never stand an enquiry from the  
" Court itself; I am now informed, that no such  
" idea was entertained by that Court. The  
" Courts of Common Law, which will upon their

<sup>1</sup> 5 T. Rep. 9.

<sup>2</sup> 2 Vez. jun. 154. Vid. also 4 Bro. C. C. 310.

" general



“general jurisdiction enter into the validity of  
“the warrant of attorney, or judgment upon  
“motion, in the particular application under  
“the Act will only set aside the judgment or  
“execution or vacate the warrant of attorney;  
“but the jurisdiction does not extend to order-  
“ing the bond to be delivered up; and if ever  
“done, it has been done inadvertently. The  
“first clause of the Statute is that, which directs  
“that a memorial shall be inrolled of every  
“deed bond instrument or assurance, by which  
“any Annuity shall be granted. It is difficult to  
“put it in more express terms than that it shall  
“contain them. All the different parts, the  
“bond, warrant of attorney, the bond from the  
“surety, all make but one assurance; the object  
“is, that the assurance and all the component  
“parts, shall be set forth, therefore the expres-  
“sion is used clearly enough; and a memorial,  
“that does not contain every deed, bond, in-  
“strument, or other assurance, is not valid  
“within the Act. It proceeds to say, that other-  
“wise every such deed, bond, instrument, or  
“other assurance, by which an Annuity is  
“granted, shall be null and void to all intents  
“and purposes. The word ‘*such*’ means every  
“one by which an Annuity is granted, and can  
“refer to nothing else. The other construction  
“will not agree with either the common, legal, or  
“strict

## PART II.

## CHAP. IV.

“ strict grammatical sense of the words. Upon  
 “ that construction, for ‘every’ you must sub-  
 “ stitute ‘each.’ They are not to be taken *sin-*  
 “ *gulatim*, but collectively; and otherwise the Act  
 “ would be defeated. Suppose the assurance was  
 “ bond, warrant and judgment, and the bond  
 “ was defectively set forth, shall you say the bond  
 “ is bad, but the judgment good and ought to be  
 “ executed without the bond to support it? Sup-  
 “ pose it had been money in the funds, and that  
 “ the bond was defective, would you say that  
 “ was void, but the demise was to stand? The  
 “ plea to any of these instruments would be,  
 “ that the memorial was not good to the whole;  
 “ and though the Court will not proceed further  
 “ than the application requires, yet there is no  
 “ doubt in that or any other, that the conse-  
 “ quence of the defect affects all the parts of  
 “ the transaction, because all are to be taken to-  
 “ gether, and cannot be severed so as to give ef-  
 “ fect to one.”

In part af-  
 fected to by  
 Lord Ken-  
 yon.

This great and important case was ultimately determined in Trinity Term 1793: and as lately as Michaelmas Term 1795, Lord Kenyon in *Hart v. Lovelace* spoke thus to the question: “ I  
 “ am not prepared to say, whether or not all the  
 “ instruments given to secure an Annuity must be  
 “ set aside merely because one only is not proper-  
 “ ly registered. The cases on this subject are not

“reconcilable: but in the latest of them Lord  
 “Loughborough, who drew the Annuity Act,  
 “decided in the Court of Chancery, that if any  
 “one of the deeds constituting the assurance for  
 “the Annuity was not properly inrolled, all the  
 “instruments were void. We are not now to  
 “determine that point: but the strong inclina-  
 “tion of my opinion is, that any defect in the  
 “memorial of one of the deeds, will vitiate the  
 “whole assurance.”

The words of the Court in *Grant v. Foley*<sup>1</sup>  
 are a fair comment upon the intent and effect of  
 the 2d section of the Annuity Act. “The  
 “Statute requires, that whenever any step is to  
 “be taken respecting an Annuity granted be-  
 “fore the Act passed, an inrolment must be  
 “made like to the memorial, which must be  
 “made at the making of a new grant, that is,  
 “the state of the parties, as they are at the time  
 “of the inrolment.”

Of the 2d  
 section of  
 the Act.

If we come to connect this doctrine of the  
 Court of Common Pleas with what fell from  
 Lord Loughborough in *Bolton v. Williams*, viz.  
 that<sup>2</sup>, “no person can claim in right of another  
 “grantee

Of the ne-  
 cessity of re-  
 gistering an  
 assignment.

<sup>1</sup> Manuscript Case in Hunt. 2d edit. 43. 23 Geo. III.  
 C. B.

<sup>2</sup> 2 Vez. 156, and as Brown says (311. 4 C. C.) “it is  
 “perfectly



PART II.  
CHAP. IV.

Difference  
of the opi-  
nions of the  
King's  
Bench and  
Common  
Pleas.

“grantee of an Annuity without having that  
 “derived to him under a proper memorial re-  
 “gistered of the assignment being made : for it  
 “must appear by the registry, who is the real  
 “owner and beneficially entitled to the An-  
 “nuity :” I am at a loss, to know how to re-  
 concile it, with the very explicit decision of the  
 King’s Bench in *Bromley v. Greathead*, when they  
 determined that the registering of an assignment  
 of an Annuity once inrolled was neither requi-  
 red by the words nor the spirit of the Act. With  
 due deference to the authority of the Court, I  
 humbly suggest, if the noble Lord, who drew  
 the Annuity Act be right in his positions, that  
 before process can be had against a grantor of  
 an Annuity granted before the Act, the state of  
 the parties must be set forth in the memorial, as  
 they are at the time of the inrolment, and that  
 no person can claim in right of another grantee  
 of an Annuity without having that derived to  
 him under a proper memorial registered of that  
 assignment being made, then must the Act re-  
 quire a memorial to be registered of the assign-  
 ment : for how otherwise will it (Lord Lough-  
 borough says *must*) *appear by the registry, who is*  
 “perfectly clear, that no person can claim under an Annuity  
 “granted to another, where there is not a good memorial ;  
 “for it must appear by the memorial, who has the present  
 “subsisting right.”

*the*

the real owner or beneficially entitled to the Annuity? The reasoning of Lord Loughborough is evidently bottomed on the beneficial effects, which the registry is supposed and intended to operate upon the grantor of the Annuity. And I find it difficult to conceive the grounds, upon which the Court of King's Bench, which in *Dixon v. Birch* and *Toyte*, declared the object of the Statute to be the protection of the grantor have by these decisions established the necessity of registering a memorial of an assignment of 99l. part of an Annuity of 100l., and determined that an assignment of the whole Annuity is not required to be registered either by the words or the spirit of the Act. But *non nostrum est*—

In *Bromley and Greathead*<sup>1</sup> Mr. J. Grose, who had been counsel in *Grant and Foley*, (in which latter case, the necessity of registering the assignment from *Grant* to *Dallas* was admitted), said that was a case, in which the assignment existed at the time of the enrolment of the first deeds, and that that was the reason of the decision. And upon the ground of this distinction did the King's Bench decide both the cases of *Bromley and Greathead* and *Dixon v. Birch and Toyte*: but the Reporters inform us not in what the Court made that difference to consist. It would have been satisfac-

<sup>1</sup> Hunt. 2d edition, 44.

PART II.  
CHAP. IV.

tory had they noticed the rules grounds or principles of Law, by which an assignment of an Annuity made on the nineteenth day after the grant and before inrolment differs from an assignment of it on the twenty-first day after the grant when it has been inrolled, as to the original grantor of the Annuity, for whose protection this registry was instituted.

The only construction, which I find the Court has put upon the words of the 3d section of the Act, (*and which shall be in money only*) is in the case *ex parte Fallon et Uxor*. Two objections were started against an Annuity granted by Fallon and his wife: one of them was, it's not being registered within twenty days inclusive of the execution of the securities, of which I have before spoken. The other, that the whole consideration was not paid in money to the grantor against the 3d section of the Act: the greater part of the consideration having been paid by direction of the grantors to a former Annuitant for the assignment of his Annuity, and the remainder 105l. paid to Fallon.

Of one Annuity being the consideration of another.

Lord Kenyon observed " that it was not necessary then to determine, whether an assignment of one Annuity be a sufficient consideration for the grant of another within the Annuity Act. (A clear proof, that he looked upon the case as undecided.) The great mischief

" intended



"intended to be provided against by the Legisla-  
 "ture in this Act was the fraud and circum-  
 "vention of those, who took advantage of the  
 "necessities of distressed persons desirous of  
 "taking up money upon Annuities by putting  
 "off goods upon the latter at their own price  
 "instead of money, which goods they were  
 "afterwards to dispose of at a considerable loss.  
 "For this reason the Legislature required, that  
 "the consideration should be in money and not  
 "in goods. But it is not necessary nor was it  
 "ever intended, that the money should be actu-  
 "ally told down at the time of the grant. If it  
 "be a *bonâ fide* transaction and the money be  
 "really paid to the grantor or to his use, it satis-  
 "fies the words and meaning of the Act. Now  
 "that was the case here. The grantee paid a  
 "valuable consideration for this Annuity, which  
 "the grantor received, though not immediately  
 "from him; yet it was paid on the grantor's  
 "account. I am not indeed prepared to say,  
 "that any Annuity however obtained or for  
 "whatever sum is a sufficient consideration with-  
 "in this Act for the grant of another Annuity :  
 "but at any rate this was purchased in the way  
 "of agency by the request and for the use of the  
 "grantor."

*Aschurst* J. concurred.

*Buller* J. "The Annuity Act intended to pro-

PART II.  
CHAP. IV.

“hibit the purchase of Annuities for goods be-  
 “longing to the grantee, by the sale of which at  
 “a price stipulated by himself the grantee gained  
 “an unreasonable and fraudulent profit out of  
 “the consideration, which was pretended to be  
 “advanced. And therefore it is expressly re-  
 “quired, that the consideration shall be in money  
 “and not in goods. But that cannot affect this  
 “transaction; for here the purchaser of the se-  
 “cond Annuity cannot be said to have ever been  
 “in possession of the first on his own account;  
 “for he redeemed it at the express requisition  
 “of the grantor and on her account; and must  
 “therefore be taken to have expended so much  
 “money for her use, which is the same as if he  
 “had paid it to her. And then this cannot be  
 “distinguished from the case of a debt for so  
 “much money actually borrowed of the grantee  
 “by the grantor.”

*Grose J.* “The object of the Act was to pre-  
 “vent the payment in goods instead of money,  
 “but I consider the 640l. as really paid to the  
 “Fallons.”

To the construction also of this part of the Act  
 is applicable the saying of Lord Kenyon, which  
 I before quoted in *Rumball v. Murray*, “I agree  
 “with the construction put at the Bar, that  
 “money is mentioned in the Act, as contradis-  
 “tinguished from goods, and so far notes when  
 “paid

“paid are money within the meaning of the  
“Act.”

PART II.  
CHAP. IV.

Of the 3d  
section of  
the Act.

Important and general as is the case intended to be provided against by the third section of the Act, it is utterly unaccountable, that it does not appear to have ever come directly before the Court: if it have, it has eluded my researches. The difference between this third section and the first section of the Act does not consist in the ultimate effect or consequence, which in both cases is the avoidance of the deed, but in the cause of such avoidance; in the first by omitting to insert something in the memorial, in the second by omitting to insert something in the deed. I will exemplify my meaning by a real case, which has come before the Court, though I cannot from the report of it conclude, that the Court applied it's decision to the effect of this third section of the Act. The case I allude to is the *Duke of Bolton v. Williams*<sup>1</sup>, where the Chancellor in speaking of the memorial's being defective from not setting forth truly the payment of 2000l. by Creswell to Mary Charlotte Williams said, “Instead of being truly it is falsely set forth. The money was “not in truth paid by *Creswell*, but by an agent, “whose name ought to have been set forth. It “should have stated, that it was paid by *Jenkins* “and on behalf of *Creswell*.”

How dif-  
ferent from  
the first sec-  
tion.

<sup>1</sup> 2 Vez. 153.



PART II.  
CHAP. IV.

Of setting  
forth in the  
deeds the  
names of  
agents, who  
pay the mo-  
ney.

Upon this decisive opinion of Lord Loughborough we must conclude, that at all events the Annuity granted by *M. C. Williams* to *Creswell* was void : and it appears from the report, that it was found void from the defective memorial under the operation of the first section. Yet upon reflection on these words, *it should have stated that it was paid by Jenkins and on behalf of Creswell*, we are naturally led to conclude, that the Court looked to the third section of the Act, which positively directs, that in every deed bond or assurance the name or names of the person or persons, by whom and on whose behalf the said consideration or any part thereof shall be advanced shall be fully and truly set forth in words at length. It appears therefore uncontrovertible, that in every case, where the grantee of an Annuity does not actually pay the money himself in person, the agent's name, by whom he pays the consideration must be set forth *in every deed bond or assurance*, by which the Annuity is granted or secured to him. . It prohibits not the payment of the consideration by an agent, but annuls every deed, which does not specifically set forth upon the face of it the name and function of such agent.

The *fourth section* of the Act has given rise to three distinct classes of cases ; the *first* relates to the return or retention of any part of the consideration

deration on any pretence whatever, the non-payment of notes given as the consideration, and the payment of the consideration in goods: the *second* class concerns the persons, who may and the time when they may apply to the Courts to vacate the Annuities: and the *third* respects the jurisdiction of the Courts.

Of retaining  
a part of the  
considera-  
tion-money.

Of the first class is the before-mentioned case of *Broomhead v. Eyre*, where the bill of charges including the procuration-money received by Woodgate the real purchaser was looked upon as a retention of a part of the consideration-money within the fourth clause of the Act. On which occasion according to the Manuscript Case in Hunt, "the Court of King's Bench said, that the Public were much indebted to "the excellent person, who drew up the Act of "Parliament, which enabled them to put an "end to transactions of this sort, and that the "effect of the Act would be at an end, if they "suffered a case of this kind to escape them; "that it had been long determined, that if the "lender of the money charged for procuration, "it was Usury, because he was not entitled to "it for putting out his own money." Although the Court seemed also to have made up their mind upon the other objection made to this Annuity, which as before observed, was the defect in the memorial from not setting forth the

PART II.  
CHAP. IV.

law-charges, yet "the Court added, that they  
 " would make the rule absolute on the ground,  
 " that it was within the fourth clause of the Act,  
 " as a warning against such shameful transac-  
 " tions." Of the like tendency was the case of  
*Cox v. Wright*<sup>\*</sup>, where the King's Bench set aside  
 an Annuity for a defect in the memorial, which  
 stated, that 500l. were to be given for an An-  
 nuity of 100l.; but 150l. had been retained for  
 the payment of a year and a half's Annuity. It  
 appears singular, that in this case, the deeds were  
 not ordered to be cancelled under this fourth  
 section, whereas they seem to have acted under  
 the first section only. The case of *Watts v. Mil-*  
*lard* applies to the fourth clause of the Act, as it  
 is reported in Mr. Hunt's Manuscript Case;  
 although the Term Reports make it turn solely  
 upon the defect in the memorial. The fact was,  
 that the memorial set forth the whole considera-  
 tion as paid to the defendant, whereas the plain-  
 tiff paid 50l. part of it with the defendant Mil-  
 lard's consent to satisfy a creditor of Millard's.  
 " But the Court held, that the receipt of 50l.  
 " admitted by the grantor as money for another  
 " person made the Annuity void, because it was  
 " retained on a pretence within the fourth section  
 " of the Annuity Act."

Different  
 reports of  
*Watts v.*  
*Millard.*

<sup>\*</sup> Manuscript Case in Hunt. 2d edit. 162.



The second class of cases under this fourth section of the Act, concerns first the persons, who are empowered by it to make the application to the Court; and by the words of the Act this seems to be confined *to the person by whom the Annuity or Rent Charge is made payable*. Yet the Courts seem in a variety of instances to have extended this beneficial effect of the Act to other persons, than the mere grantor of the Annuity. As in *Saunders v. Hardinge*<sup>1</sup>, where a judgment creditor of *Hardinge* the grantor applied to the Court, in which a judgment was entered up against him on the Annuity bond, with a view of letting in a subsequent judgment of his own: and obtained a rule to shew cause, why the judgment and the writ of *fieri facias de bon. eccl.* had thereon should not be set aside on account of a *defect in the memorial*, which had not truly set forth the real and full consideration. It was urged by the plaintiff's counsel, that if the Annuity were to be vacated from any defect in the memorial, it could only be done on the motion of the defendant, but not of a stranger. The rule was in fact made absolute on account of the defect in the memorial: but *Grose J.* on the occasion made a very pertinent and important distinction between the operation of the fourth and the first section of the Act: viz. "The fourth section referred to, which says, that the grantor

<sup>1</sup> 5 Term Rep. 9.

" may

PART II.  
CHAP. IV.

“ may apply to the Court, &c. refers to a different class of cases, those where part of the consideration is returned, &c.” In the before-mentioned case of *Broomhead v. Eyre* the motion, upon which the Court set aside the Annuity on account of *Woodgate’s* retaining or receiving back part of the consideration-money was made by Mr. *Wade* the surety in the bond with *Eyre*. But it may be presumed, that the surety was looked upon as a grantor. Of this opinion the Court seems very tenacious: for in *Garrood v. Sanders* <sup>1</sup> they discharged a rule for ordering the deeds to be delivered up and cancelled, because they were not inrolled within twenty days of the execution. The Counsel admitted the deeds were void under the first section of the Act, but contended that the Court had no authority to order them to be cancelled under the fourth section, which confines that authority to the cases specified in the fourth section and the application of the grantor. But

Fourth section confined to the grantor.

“ The Court said, that the words of the fourth section were expressly confined to cases, where the application was made by the grantor himself: and that it appeared immaterial, whether the deeds in question were or were not delivered up, as they were clearly nullities by

<sup>1</sup> 6 Term Rep. 404, and *fusiis* in manuscript: apud Hunt. edit. ii. 235.

“ reason

“reason of the first clause”: that they had no  
 “power to set aside the deeds, because there  
 “never was an Annuity in existence; and  
 “although *Doußerry* were an assignee of the  
 “leases, he was not sufficiently interested, as  
 “appeared by the fourth session of the An-  
 “nuity Act, which specifies what interest en-  
 “titles a person to seek relief in that Court.”

\* This latter part of the judgment of the Court is not in the Term Reports. It appears in reality rather a singular reason: for if before the expiration of twenty days from the execution no Annuity existed, because no inrolment had been made, then I conceive an assignment of such Annuity or an insurance made upon it could not be valid. Suppose then the grantor dies before the expiration of the time for inrolling without any inrolment made; Quere the validity of an assignment or a policy made before his death: and if the necessity of inrolment survive the duration of the estate granted? In the case of *Bellingham v. Alsop* (Cr. Jac. 52, and Noy, 106.) a bargaineer before inrolment bargains and sells to another, and afterwards the first deed is inrolled, and after that the second: yet it was holden, that nothing passed from the bargaineer, as he had not any estate in him at the time of the bargain and sale made to him to give to a stranger. And they held, that until the inrolment the estate was in the bargainer and nothing passed from him. Quere, then how far these principles apply to the Annuity Act? The Inrolment Act of Henry VIII was made for the security of the purchaser and the inrolment is a part of the security, which the vendor is obliged to complete. The registering under the Annuity Act is for the benefit and protection of the grantor and is to be done by the grantee for his own security.

The



PART II.  
CHAP. IV.

Of the interest that entitles one to apply to the Court.

The inference, which flows from these last words can scarcely be justified; for the fourth section of the Act does not certainly specify, what interest entitles a person *generally* under the Act to seek relief in the Court; but it explicitly and exclusively gives the power to the Court of ordering the deeds to be cancelled at the application only of the grantor in the cases of returning or retaining of any part of the consideration-money, or of the notes in which payment was made not being duly honoured, or of the consideration being in goods: but it specifies not what interest a man must have to apply to the Court upon other grounds. In *Saunders v. Hardinge* the second judgment creditor, who applied to the Court to have the first judgment set aside for a defect in the memorial under the first section evidently was in no sense a grantor of the Annuity, but a total stranger to it: and therefore he would not, I presume, have been admitted by the Court to apply to have the deeds cancelled under the fourth section, because Mr. Hardinge had returned part of the consideration. That application could have been made by none but Mr. Hardinge himself.

Of being barred from applying by lapse of time.

The discordant determinations of the Courts upon the length of time, beyond which they have refused relief under this Act are not easily to be drawn into unison. It is highly important

to sift the grounds of their variance ; as nothing can more materially affect the persons, for whose benefit the Act was made, than the knowledge of what *acts of their own* will preclude them from the relief and redress, which the Act intends and holds out to them. It appears repugnant to the first principles both of law and equity, that this Statute should be converted into a dead letter upon any unsettled precarious arbitrary discretionary or uncertain ground whatever. The Act itself contains no limitation of actions or applications to be made under it. The spirit and principle of the Act directly militate against any such limitation. Nor do I conceive how the Common or Statute Law can warrant any other bar by way of limitation of time, than under some of the numerous cases, for which one or the other of them has provided from sixty years in a writ of right to twelve months under particular Statutes. In this whole Statute I do not discover a word, which even tends to import confer or give any resulting or reviving right to the grantee to hold his Annuity against the grantor under deeds or securities which are *ipso facto* void. *Quod ab initio non valuit, tractu temporis non valebit* is a maxim of law emphatically applicable to this case. Were the securities only voidable, it would be obvious how the laches of an individual might prevent their being avoided.

Of being  
barred by  
the laches  
of the party.

PART II.  
CHAP. IV.

avoided. But in the case of the Annuity Act, the avoidance of the securities is affected by the operation of the Statute; the laches or conduct of the grantor cannot affect that operation: and the Court can only declare, where it has operated and where not: they cannot narrow, extend, suspend or check the operation of the Statute. Nor can I collect from any part of the Statute, that any other *discretion* is thereby given to the Courts, than in the mode and degree of punishing the misdemeanors of those, who contract with infants or take exorbitant fees for procuration-money.

Courts have  
no discretion  
in entertain-  
ing applica-  
tions.

Upon these principles did Lord Loughborough, who must certainly be presumed to know the true spirit and meaning of his own Act declare in *Grant v. Foley*<sup>1</sup>, that the Court had no right to refuse summary relief, where the Act operated by annulling the securities. It was in that case objected “that the application came “too late to set aside an execution issued on a “judgment entered on an Annuity bond, and “that as the party knew long before, that the “assignment of the Annuity was not inrolled “he had been guilty of *laches* in not applying, “and that the Court were not bound to give “summary relief.” In answer to which Lord

<sup>1</sup> Manuscript Case in Hunt. 2d edit. 235. C. B. Trin. 23 Geo. III.

Lough-



Loughborough Ch. J. said, "That it was not positively charged, that the party applying did know, that the memorial was irregular: and that if he had known it, he doubted whether the Court could refuse to give summary relief on his application: that the Statute declared the proceeding to be null and void; so that the Court was doing no favor: consequently that the execution must be set aside."

Under this determination of the Court of Common Pleas, which appears so intimately founded in the spirit principles and words of the Annuity Act, it should appear settled, that a grantor is not precluded by any length of time from applying to the Court for relief under the Act, which certainly does not undertake to punish the grantor for his personal laches, but only the neglect of the grantee in not registering a memorial of the transaction in a proper manner and within the limited time. A grantor may be a long while wholly ignorant of the nullity of the deeds and assurances he may have entered into; after having been advised of their nullity, he may still doubt: even after he may have made up his mind to apply to the Court, absence difficulties and doubts of his witnesses, pecuniary or other embarrassments of his own appear to be just reasons for deferring his application to the Court; and it would be truly harsh

Whether  
the Act af-  
fects the  
laches of  
the party.

PART II.  
CHAP. IV.

Difference  
of opinion  
in Lord  
Kenyon and  
Lord Lough-  
borough.

to shut him out of the relief given by the Statute, because he may have let one or two terms go by (to his own loss) without pursuing a remedy, which the Act confines to no limitation of time whatever.

Lord Kenyon however, who on most occasions seems to have been rather disposed to extend, than confine the remedial effects of the Act, upon this point appears to have differed from Lord Loughborough. For in *Simmonds v. Mortimer*<sup>1</sup>, where the case turned upon the validity of the memorial, but the application was made by the defendant and the facts were supported only by his affidavit after the death of the agent, who had negotiated the Annuity between all parties, Lord Kenyon Ch. J. having stopped the counsel against the rule said: "The length  
" of time, which has elapsed since the granting  
" of this Annuity and the defendant's having  
" lain by till the death of the agent, by whom  
" the business was negotiated, and till all evi-  
" dence of the transaction, except what he him-  
" self has disclosed was lost, might perhaps have  
" been a sufficient answer to the application  
" without entering further into the merits of it."

*Cousins v. Thomson*  
differently  
reported.

According to the Manuscript Report given by Mr. Hunt of the case of *Cousins v. Thomson*<sup>2</sup>,

<sup>1</sup> 5 Term Rep. 159.

<sup>2</sup> Hunt. 2d edit. 238, and 6 Term Rep. 335.

which

which in this differs from that given by the Term Reporters, Lord Kenyon seems to have gone the whole length of precluding Mr. *Thomson* from his remedy on account of his *laches* in not making an earlier application to the Court; or rather for having acquiesced in and paid the arrears of the Annuity under two executions and then denying, that he had received the full consideration-money, when *Teasdale* the agent in the business was a beggar in St. Martin's workhouse and in a state of mental imbecility, so that he could give no account of the transaction.

"The Court after looking at the affidavits on both sides said, they were always anxious to carry into effect the valuable purposes of this Act; but at the same time in doing that, they must take care and not go beyond the mark. They were of opinion that the turn of the scale in this case ought to be given to the affidavits on the part of the plaintiff, in as much as they were fully confirmed by all the transactions that followed. The Annuities were granted in November 1792;—things go on till 1793, when two payments become due. All was right then according to *Thomson*: for two executions came into his house and he actually makes them the payments. If the consideration-money had not been paid, that would have been a good answer to those executions, and it

Mr. Thomson  
barred  
by his own  
*laches*.

E e

" was



PART II.  
CHAP. IV.

“ was to have been expected, that he would  
 “ make a stand then, and have brought forward  
 “ this application to the Court. But instead of  
 “ that he is silent, till the mind of *Teasdale*, the  
 “ most material witness in this business, is redu-  
 “ ced to a state of imbecility; and then it is  
 “ for the first time, when this man can give  
 “ no account of the transaction, that *Thomson*.  
 “ comes into this Court and complains of grie-  
 “ vous oppression. Their Lordships were una-  
 “ nimously of opinion, that the rule ought to be  
 “ discharged.”

The pro-  
 vince and  
 jurisdiction  
 of the Court.

Whether this Manuscript Report be more authentic, as it is more particular than that in the Term Reports I pretend not to suggest; but it evidently makes the judgment of the Court hinge upon a different ground; which are the laches of Mr. *Thomson*. Whereas the two points, upon which the Court decided according to the Term Reporters, were 1<sup>o</sup>. that a recital of the consideration is as effectual in the memorial, as a substantive averment of it's payment, and 2<sup>o</sup>. that Bank-notes need not to be specified like notes, that have any time to run. If however *Thomson* were refused relief by the Court, because he did not apply sooner or under other circumstances, this will be an assumption of a discretionary power by the Court, which the Act does not appear to have given them, to punish a  
 man's

man's ignorance doubt irresolution folly imprudence or necessities by giving validity and effect to securities, which the Statute has rendered void. Upon the whole I cannot help drawing this conclusion from the authority of *Grant and Foley*, from the context of the Statute and the reason of the case, that upon an application even of a stranger to the Annuity at any time to set it aside for the non-compliance with any of those conditions of the three first sections of the Act, for want of which the Statute declares the securities *null and void*, the Court finding the case to be within the Statute has no discretionary power to refuse or discharge the rule. The province of the Court seems merely to declare, whether they admit of those circumstances in the case, under which the Statute has actually avoided the securities. It is moreover evident, that no laches or other conduct of the grantor can by a retrospective operation give validity and effect to deeds, which are by force of the Act null and void to all intents and purposes <sup>1</sup>.

We

<sup>1</sup> As in the course of this treatise, particularly in the last Chapter of it I have had occasion to speak of some decisions of the Courts, which appear inconsistent with others upon the same points and contrary to the spirit and meaning of an Act of Parliament, I think it not improper to state what will be found in a note in *Hales Pl. Cor.* 1 pt. 122.  
"Were it a point of Common Law, the repeated resolutions

PART II.  
CHAP. IV.

Of the  
Courts that  
may enter-  
tain appli-  
cations.

We come naturally now to consider what the Courts have decided concerning their jurisdiction and power under the Annuity Act: and here we must reflect, that the fourth is the only section in the Act, which in any manner confines the relief to a particular Court, and this section declares, that it shall and may be lawful for the grantor to apply to *the Court, in which any action is brought &c.* But this section, as was before observed confines it's provisions to the cases of *retaining or returning a part of the consideration, of notes given for the consideration not being paid, of the consideration being in goods, and the application being from the grantor.* The gift of this power and jurisdiction to the particular Court, in which proceedings are commenced is expressly and in terms confined to the cases of the section: and goes not to those cases, where there was a defective or no inrolment; as the

“ of the Judges is the only way to know what the Law is,  
“ but where the question arises upon an Act of Parliament  
“ that is to be the rule for Courts of Justice to go by, of  
“ which they are to judge according to their own reason and  
“ understanding and are not in such case tied down by for-  
“ mer determinations any further than the reasons and argu-  
“ ments thereof appear conclusive for *judicandum est legibus*  
“ *non exemplis*, Co. P. C. 6. in *margin.*” Vide also, *Sup-*  
*plement to the Investigation of the Native Rights of British Sub-*  
*jects* by the author, 1785. pag. 4.

Court



Court acknowledged in *Garrod v. Saunders*<sup>1</sup> viz. "That the words of the fourth section were "expressly confined to cases, where the application was made by the grantor himself and that "it appeared immaterial, whether the deeds in "question were or were not delivered up, as "they were clearly nullities by reason of the "first clause." True it is, that the general practice is to make every application under the Annuity Act, no matter upon which section, to the Court, in which the warrant of attorney directs the judgment to be entered up: this appears to be dictated not only by the spirit and reason of the enactment in the fourth clause of the Act, but by the nature and exigency of the thing itself. But as it is not necessary, that a warrant of attorney should always make part of the security, the grantor of an Annuity otherwise secured, than by a warrant or a judgment actually entered up, or some suit actually depending concerning the Annuity, would be totally shut out of the benefit of the Act, if no application could be made to a Court, in which no proceedings were commenced.

In *Haines v. Hare*<sup>2</sup> an application was made by recommendation of the Chancellor to the Common Pleas, in which a judgment had been

<sup>1</sup> 6 Term Rep. 404.

<sup>2</sup> 1 H. Black. 659.

PART II.  
CHAP. IV.

entered up by the defendants for securing an Annuity to the plaintiff, to compel the plaintiff to consent to the redemption of an Annuity according to the terms of the original contract: but nothing appearing in writing to support the contract against the deed, which was without any clause for redemption, the rule was discharged<sup>1</sup> as the bill for the same purpose in Chancery had been dismissed. This point it was argued, was completely settled by the cases of *Lord Irnham v. Child* (1 Bro. C. C. 92) and *Lord Portmore v. Morris* (2 Bro. C. C. 219)<sup>2</sup>. In giving judgment upon this case, Lord Loughborough spoke thus upon the jurisdiction of the Court,

Of the Court's jurisdiction where there are warrants of attorney.

“ The application was made to this Court on  
 “ the ground, that the security being a judgment  
 “ entered on a warrant of attorney, it was in it's  
 “ nature made under the sanction of the Court,  
 “ that the Court had therefore a controul over  
 “ it, would examine into the consideration on

<sup>1</sup> The bill and the application to the Common Pleas were against the executors of the original grantees, who disclaimed any right to accept of the redemption, the Annuities having been specifically bequeathed. But Lord Loughborough in giving judgment drew a strong distinction between proving a verbal contract against the original party and his representatives.

<sup>2</sup> Vid. also, *Preston v. Merceau* 2 Black. 1249. and *Mercu v. Ansue*. 3 Will. 376.

“ which

"which it was entered up, and not permit the  
 "party to avail himself of it, so as to receive  
 "more than in justice he is entitled to take.  
 "The case comes before the Court as it fitly and  
 "properly should without any prejudice at all  
 "from what has passed in the Court of Equity.  
 "For the application to the Court of Equity was  
 "founded on circumstances very different from  
 "what might appear to this Court sufficient, on  
 "this species of application, for interposing by  
 "the authority, which it is necessary every Court  
 "should have, whose records are made matters  
 "of security and inquiring into those securities,  
 "which proceed on the assumption of a suit,  
 "which in fact was never brought. But when  
 "the Court is exercising it's authority with re-  
 "spect to judgments entered, this principle is  
 "clear, that in judging of the transaction, which  
 "is the foundation of the judgment, they will  
 "find themselves governed by the same rules,  
 "which the Law has prescribed, if the trans-  
 "action itself independent of the judgment were  
 "before the Court in the form of an action.  
 "We have not a greater latitude by having an  
 "authority over the judgment entered up, than  
 "in the decision of the question between the  
 "parties themselves'."

In the case *ex parte Chester* the Court said,  
 that

\* In this judgment Lord Loughborough spoke in a man-



PART II.  
CHAP. IV.

that<sup>1</sup> “ the warrant of attorney (without any judgment entered up) gave them a jurisdiction, for that it was a proceeding in the Court, and was of greater importance, than the commencement of an action in the regular course; because it enabled the party to sign judgments immediately without any application to the Court.”

In *Thurkill v. Wallace*<sup>2</sup>, which was also an application to the King’s Bench upon the Annuity Act, the Court said, “ That independent of that Act it had been long ago settled upon much argument and deliberation, that the Court has a summary jurisdiction over every warrant of attorney to enter up judgment in the Court,

ner of the practice of inserting a clause for redemption or repurchase in an Annuity deed, that shews how prevalent and in fact how warrantable the idea of its being usurious was: for had his Lordship seen the point so completely clear of all doubt, he would scarcely have spoken of it in the following manner: “ An idea has also prevailed, that the insertion of an express agreement to redeem might be dangerous to the security, and expose it to impeachment on the score of Usury by converting it in its appearance into a loan, and under those apprehensions (whether well or ill founded it is not now necessary to consider) “ covenants for that purpose have not been inserted in the deeds.” Vid. antea, p. 266, &c. what I have said upon this point.

<sup>1</sup> 4 T. Rep. 694.

<sup>2</sup> Mich. 31. Geo. R. R. cited in a note in the above case 4 T. Rep. 695.

“ before

“ before any judgment has been actually entered  
 “ up, and may, if they see proper, direct it to  
 “ be cancelled, to prevent any improper use to  
 “ be made of it.”

So in *Duke of Bolton v. Williams*<sup>1</sup>, according to Brown, Lord Loughborough speaking of the jurisdiction of the King's Bench, said, “ that the  
 “ Court could go no farther than the application  
 “ before them: yet when their own process is  
 “ made the means of a conveyance, they can  
 “ take no notice of it upon motion.” And according to Mr. Vezey's better report of the case, his Lordship said, “<sup>2</sup> The Courts of Common Law, which will upon their general jurisdiction enter into the validity of the warrant  
 “ of attorney or judgment upon motion in the  
 “ particular application under the Act will only  
 “ set aside the judgment or execution or vacate  
 “ the warrant of attorney, but the jurisdiction  
 “ does not extend to ordering the bond to be  
 “ delivered up, and if ever done it has been done  
 “ inadvertently.”

Of the particular authority of the Courts.

I have before observed, that Lord Kenyon had observed in *Garrood v. Saunders*, that when the deeds were defective under the first section, it was immaterial, whether they were delivered up

Whether the Courts can entertain applications without an action commenced.

<sup>1</sup> 4 Bro. C. C. 310.

<sup>2</sup> 2 Vez. 154.

PART II.  
CHAP. IV.

or not. But this is one of the peculiarities of the Act, that the delivery up of the deeds is only directed in the particular cases of the fourth section of it: and for this, the Act did not declare the securities void and null, as in other cases, but empowered the Court, in which any action was brought for payment of the Annuity on judgment entered by motion to stay proceedings on the judgment or action, and to order the deeds to be cancelled and the judgment, if any had been entered to be vacated. We have already seen, that the Courts have interpreted the words of the Act to extend to *the warrant of attorney*, although no judgment have been entered up. And by their practice, they appear to have extended the power and jurisdiction given expressly in the cases of the fourth section *only* to every case, in which the deeds are annulled and avoided by the Statute. Were it not for the case of *Craufurd v. Caines*, which I shall take notice of presently, I should here lay it down largely, that wherever an Annuity was granted by deeds or securities, which the Act declares null and void, there the grantor is at liberty, *whether any action have been brought for payment of the Annuity or not*, to apply to any of the four Courts of Record at Westminster, and they have full and competent jurisdiction to entertain the application, and to examine into the



the proofs, upon which they must either discharge or make the rule absolute, which in fact and substance is a declaration, whether by the Statute the deeds be null or valid.

PART II.  
CHAP. IV.

In saying this, I do not pretend to maintain, that although each of the four Courts may have competent jurisdiction to give relief under the Statute, therefore they can repeatedly or successively admit applications where on the same grounds the matter has been once *res judicata* by a Court competent to judge it. But if a grantor having been advised to apply to a Court of competent jurisdiction to set aside an Annuity<sup>1</sup> should have failed in his proofs and application, I cannot conceive, that under better advice his application to another or even to the same Court should be rejected, when made upon fresh grounds: nor is it readily to be explained, how the Courts, which are officially bounden to take notice of every public Statute, can discharge a rule for vacating an Annuity, which they may know to

Same points  
not to be  
twice judg-  
ed.

<sup>1</sup> With great submission to the general practice I humbly suggest, whether it might not be more congenial with the spirit of the Act, that in all the cases under the three first sections of it, the applications to the Court should be for *declaring the securities null and void by the Statute*, instead of setting aside the Annuity or ordering the deeds to be delivered up to be cancelled, as doubts and difficulties have been started upon the latter, which could not have occurred on the proposed motion.

PART II.  
CHAP. IV.*Craufurd  
v. Caines.*

be void by a public Statute, though the particular ground may not be pleaded or urged by the party applying for relief.

In the case of *Craufurd v. Caines*<sup>1</sup>, Sir Hew Craufurd had purchased an Annuity of the wife of the defendant for the joint lives of the defendant and his wife, and for her life in case she survived, out of a Rent Charge secured to her for her life upon lands. She levied a fine *sur conusance de droit tantum* to Sir Hew Craufurd, and a bond and warrant of attorney to confess judgment in the King's Bench were given to him for better securing the Annuity. A motion was soon after made in B. R. for setting aside the Annuity and Sir Hew died before any judgment was actually entered upon the warrant. And now a rule was granted in the Common Pleas to shew cause, why the Annuity should not be set aside and the deeds, &c. delivered up to be cancelled and the fine vacated on the ground, that the memorial did not truly set forth the consideration 1700l. being the sum stated to have been paid, when in truth part of it was kept back by Sir Hew, and that several of the securities were not fully stated in the memorial. Although the circumstance of the retention of part of the consideration by Sir Hew

<sup>1</sup> 2 H. Black. 458.

Craufurd appeared to the Court in this case, yet the defendant by the report does not appear to have applied under the fourth but under the first section of the Act to set aside the Annuity on account of the defect in the memorial.

PART II.  
CHAP. VI.

I have before remarked, that the fact of retention of a part of the consideration by the grantee is one of the circumstances, under which the Statute has limited the jurisdiction of the Court. Here the fact occurred and the Court without giving any opinion as to the alledged defects in the memorial, spoke only to the jurisdiction of the Court: viz. "That as, there was  
"neither a judgment nor warrant of attorney in  
"the Common Pleas, they had no jurisdiction  
"in the matter in question: that the fine did not  
"give them jurisdiction; for it was not an action  
"within the fourth section of the Statute, nor  
"was it such an assurance, as was meant by the  
"third section: and that as there was no intrinsic defect in it, or irregularity in the mode of  
"levying it, they had no authority to interfere  
"and order it to be vacated."

A fine not  
an assurance  
within the  
Act.

If we divest this case of the circumstance of Sir Hew Craufurd's having retained a part of the consideration-money, it will then become a formal decision, that an Annuity not secured by a warrant of attorney or judgment is out of the provisions of the Annuity Act, unless the  
grantee



PART II.  
CHAP. IV.

grantee shall have actually commenced an action for the Annuity. And this harsh absurd and incredible inference must follow, that although the Statute render the securities null and void, yet the grantor cannot avail himself of their nullity, because no Court in which an action is not commenced for the Annuity has competent authority or jurisdiction to set the Annuity aside or declare the securities null and void under the Statute.

*Hart v.  
Lovelace  
against  
Crawford  
v. Gaines.*

Reluctant as I am to believe, that it ever was the intention or ever can be the effect of the Annuity Act to exclude those from it's remedies, who may not have given a warrant of attorney, or permitted a judgment to be entered up against them, or who by the death of their grantee without entering up judgment (as in the case of Sir Hew Crawford) may have become exonerated from this part of the security, for want of competent jurisdiction in any Court to entertain their application, I am happy in being supported in this opinion by the authority of the Court of King's Bench, which in *Hart v. Lovelace* appears to me to have admitted the point. In that case, the Annuity in question had been the object of a decree in Chancery, and had been admitted to a priority before some other Annuities: and it was argued upon the application to the King's Bench to have the securities delivered

delivered up to be cancelled, that the validity of the Annuity was then passed *in rem judicatam* and could not be questioned again. The Counsel also urged, that in this case none of the objections arose on the fourth section of the Act, *which alone gives jurisdiction to the Court* to order the deeds to be cancelled for the reasons specified in the fourth section: and in *Garrood v. Saunders* the Court held<sup>1</sup> that there was no reference from the fourth to the first section. The consequence of which was, that though the deeds in question might be void, the Court could not grant what was prayed for by the rule, not having authority to order them to be delivered up. Notwithstanding this objection to the jurisdiction of the Court, they however exercised it in this instance, and made the rule absolute on account of the defects in the memorial. With reference to the jurisdiction of the Court Lord Kenyon said: "In the course of this argument  
"I have had some difficulty in my mind re-

<sup>1</sup> This opinion of the Court is not reported in the case of *Garrood v. Saunders*, 6 Term Rep. 404, which was decided in Michaelmas Term 1795: but it is scarcely to be supposed that Counsel (Erskine and Lane) would in the very same Term assert this without good reason to the Judges, who had in their presence delivered their opinion. This conclusively proves, that it is not by virtue of the power given in the fourth section, that the Courts entertain applications upon the three first sections.

"specting

PART II.  
CHAP. IV.

“specting the decree in the Court of Chancery.  
 “If this question had been brought before that  
 “Court and received a judicial decision, I should  
 “have thought myself bound by it, as being the  
 “judgment of a Court *having competent jurisdiction*  
 “*over the subject matter* : but the proceed-  
 “ings there were *diverso intuitu* : that suit had  
 “a different object in view and the question be-  
 “fore us did not arise in that Court.” *Grose J.*  
 and *Lawrence J.* said, “That this Court was  
 “not precluded by the proceedings in Chancery  
 “from entertaining this application, because this  
 “question was not agitated in that Court, though  
 “if it had, they thought it would have been  
 “conclusive here.”

The validity  
 of an An-  
 nuity not to  
 be tried  
 twice on  
 the same  
 grounds.

There cannot be a more direct and explicit  
 avowal, than this solemn declaration of the  
 King's Bench, that the Court of Chancery had  
 competent jurisdiction over the subject matter,  
 which here was the validity or nullity of an An-  
 nuity under the Act : and that if the same  
 question had been agitated in Chancery, it would  
 have been conclusive in the King's Bench. Yet  
 there was no pretence for saying, that there was  
 an action for the Annuity commenced in Chan-  
 cery, as there had been in the King's Bench by  
 the warrant of attorney executed by Mr. Love-  
 lace for confessing judgment in that Court. By  
 this case of *Hart v. Lovelace* it must then be



looked upon as settled, that when the validity of an Annuity under the Annuity Act has been once before a Court of competent jurisdiction, and there decided, another Court will not entertain an application, as to the validity of the same Annuity upon the same grounds.

This Statute has evidently created many conditions, for the neglect of which Annuities become void, and it has given a special authority and jurisdiction to the Courts in some particular cases to order the deeds to be cancelled: but the Legislature has given no special or extraordinary power to the Courts in general, or to any particular Courts, to judge of or determine when those conditions have been neglected: this has been left to their original jurisdiction and power to be exercised by them according to their own usages rules and principles. Thus we see, that in the before-mentioned cases of *Berwicke v. Read*, *Stuart v. Tucker*, *Flarty v. Odium*, *Litterdale v. Duke of Montrose*, the Court set aside the Annuities or ordered the deeds to be delivered up to be cancelled on account of the illegality of the securities, viz. the assignment of pay or half-pay of an officer. Yet there does not appear one word throughout the whole Annuity Act, which can even indirectly connect itself with this ground of vacating an Annuity.

It appears to have been a general assumption

F f

both

Courts act  
upon their  
original au-  
thority and  
jurisdiction.

PART II.  
CHAP. IV.

Whether the  
Courts of  
Record have  
original  
authority to  
entertain  
application  
on the Act.

both of those, who introduced the fourth clause of the Act and of those, who have argued upon it's effects, that no Annuities, which become objects of the Act are or can be granted and secured without a judgment or at least a warrant of attorney to confess one. But as many Annuities, in which all the evils intended to be remedied by the Statute occur, are granted and secured without either a judgment or a warrant, I presume myself correct in asserting, that notwithstanding in such case there have been no action commenced for the payment of the Annuity, as required in the cases mentioned in the fourth section, yet under the supposition of there being either a defective or no memorial of the Annuity registered according to the first section of the Act, or of the deeds not fully and truly setting forth the name of the person, by whom and on whose behalf the consideration shall have been advanced according to the third section of the Act, yet the grantor may apply to any of the four Courts of Record at Westminster, and each one of them has competent original authority and jurisdiction to entertain the application, and upon finding cause, to declare the Annuity null and void under the Act. I say *original* jurisdiction, for the particular and limited authority and jurisdiction given by the Act is confined to the fourth clause, and it was said in

Garrood

*Garrod v. Saunders*, there is no reference from the fourth to the first section. I should equally think, that a broker could not be indicted for a misdemeanor under the seventh clause of the Act, unless an action had been previously commenced in the Court, as that an Annuity might not be declared null and void under any of the three first sections of the Act without an action actually commenced.

PART II.  
CHAP. IV.

From the nature of the fifth section of the Act it will obviously occur, that no case could have come before the Court, that could be affected by it. No cases either appear in the books upon the direct operation of the criminal part of the sixth section: nor do any doubts appear to have been entertained upon the first part of the sixth section, which invalidates the contracts made by minors for any Annuity. But there are some few cases, which in their principles and consequences are so far connected with it as to lead to a discussion of considerable moment and of some difficulty.

Fifth and sixth sections of the Act.

The three first sections of the Act in certain cases avoid all the securities; the fourth section in other cases expressly authorizes the Courts to order the deeds to be delivered up to be cancelled: but this sixth section no longer advert-  
ing to the securities, enacts that all contracts made with minors shall be null and void. The

Of avoid-  
ing the  
contract  
with mi-  
nors,



PART II.  
CHAP. IV.

Mr. Powell's argument upon it.

Of avoiding the securities when the contract remains in full force, as in gaming.

Common Law renders such contracts voidable by the minor after his attaining the age of twenty-one years : but this Act goes so much farther, as to incapacitate the minor ever or on any account to give validity to a contract for an Annuity, which he may have entered into during his nonage. From this difference of phraseology in the sixth section from that of the preceding sections of the Act Mr Powell<sup>1</sup> has taken occasion to enter into a very elaborate argument, to prove, that the same difference of construction is to be admitted in interpreting the different sections of the Annuity Act, as has been admitted in construing the 16th of Car. II. c. vii. § 3. and the 9th of Ann. (c. xiv.), the first of which avoids the *contract* and securities given for money *lost at play*, the second avoids only the securities given for money won or *lent at play*.

“ This difference,” says he, “ in the wording  
“ of those Statutes and the cases decided thereon,  
“ was held by the Court of King’s Bench, in the  
“ case of *Robinson and Bland* to warrant that  
“ Court in determining, that, although, by these  
“ Statutes, as well a contract for money lost at  
“ gaming, as the security given for such money

<sup>1</sup> Essay upon the Law of Contracts and Agreements by John Joseph Powell, Esq. of the Middle Temple, barrister at law. Vid. i vol. from page 207 to 139.

" was void, and, consequently no action could  
 " be maintained for it; yet, that, as to money  
 " fairly lent at play, the securities only were  
 " void, the contract remaining valid; the ge-  
 " nuine, true and sound construction of the  
 " 9th of Ann. being ' to understand it as in-  
 " tended to prevent any securities being taken  
 " for money won at play, or lent to play with,  
 " when the borrower has lost all his ready cash;  
 " but not to make the contract itself void, where  
 " the money is fairly and *bonâ fide* lent, though  
 " at the time and place of play.' And accord-  
 " ingly it was held, that an action upon the case  
 " on *assumpsit* on the implied contract lay to re-  
 " cover money lent by the plaintiff at the time  
 " and place of play, and for which a bill of ex-  
 " change was then given, the bill itself being a  
 " void security. The Annuity Act appears to  
 " me, upon a full consideration of it's several  
 " clauses, to furnish ample grounds for a similar  
 " construction. And indeed if the province of  
 " Courts be to expound not to make the Law,  
 " I cannot see any principle, upon which this  
 " Statute can be construed otherwise."

Then after drawing a very close parity be-  
 tween these different Statutes, he thus concludes :  
 " If these observations apply, the distinction  
 " taken on the Law against gaming, between  
 " vacating the securities and annulling the con-

PART II.  
CHAP. IV.

“ tract, according to the degree of mischief inci-  
 “ dent to the transaction, is equally applicable to  
 “ the cases of Annuities ; and the terms in which  
 “ the Legislature has provided the remedy not  
 “ only warrants, but for the sake of analogy in  
 “ legal proceedings, requires, that it should be  
 “ taken. And if so, it appears to me that  
 “ whatever be the nature of the neglect of the  
 “ circumstances imposed by the Statute, or  
 “ whatever be the nature of the misfeazance  
 “ (if it be not that of treating with persons un-  
 “ der years of discretion) it will only affect *the*  
 “ *security*, leaving the contract valid, and if ca-  
 “ pable of proof without the production of the  
 “ securities, capable also of being enforced by a  
 “ suitable action.

The case of  
Shove v.  
Webb con-  
sidered.

“ I should here observe, that the opinion of  
 “ the Court of King’s Bench, in the case of  
 “ *Shove and Webb*, confirms in express terms,  
 “ these principles, although the inference, drawn  
 “ from them therein, seems to me to militate  
 “ totally against the conclusion they necessarily  
 “ furnished in that case. The facts were as fol-  
 “ lows : A had granted an Annuity secured by  
 “ bond and judgment, and an assignment of  
 “ half-pay as an ensign in the army by way of  
 “ collateral security for the payment of it. These  
 “ instruments had been set aside in the Court of  
 “ Common Pleas, because part of the conside-  
 “ ration,



"ration, for which the Annuity had been  
 "granted, was money due from the grantor  
 "to the grantee for goods, previously sold by  
 "the grantee to the annuitant, which fact was  
 "not specified in the memorial as registered,  
 "(the memorial stating the whole consideration  
 "as paid in money). The residue of the confi-  
 "deration was paid in cash at the time of grant-  
 "ing the Annuity. Upon the securities being  
 "set aside, the purchaser to recover the confi-  
 "deration paid for the Annuity brought an ac-  
 "tion of *assumpsit* for goods sold and delivered;  
 "money paid, laid out, and expended; money  
 "had and received, &c.; and had a verdict for  
 "the whole sum, as well the value of the goods  
 "as the money paid as the consideration of the  
 "Annuity; but subject to the opinion of the  
 "Court on the question, Whether the Legisla-  
 "ture meant to make it illegal to contract for  
 "the sale of an Annuity for any other confide-  
 "ration than that of money? And whether if  
 "any part of the consideration was for goods de-  
 "livered, it so far tainted the transaction, that, if  
 "the security were set aside, no right of action  
 "could ever arise as for goods sold? And  
 "Ashburst J. delivered the opinion of the Court,  
 "'That the goods in this case being really and  
 "*bonâ fide* sold the contract was strictly legal and  
 "not within the mischiefs intended to be reme-

PART II.  
CHAP. IV.

“ died by the Act ; although the securities were  
 “ properly set aside, and vacated by reason of the  
 “ consideration not being truly stated.’ But the  
 “ conclusion drawn from these premises seems to  
 “ me to be erroneous ; for the Judge proceeds  
 “ thus : ‘ And taking that to be the case, when  
 “ the security was vacated, the original contract  
 “ revived (*i. e.* the contract for sale of the  
 “ goods.’ )

“ Now how the vacating the securities could  
 “ revive the original contract for goods sold and  
 “ delivered, &c. when the contract by which the  
 “ debt due for them was made part of the con-  
 “ sideration for the purchase of the Annuity, was  
 “ declared ‘ to be a contract strictly legal and  
 “ not within the mischief intended to be reme-  
 “ died by the Act ’ to me is inexplicable ; unless  
 “ it can be shewn, that the contract and the se-  
 “ curities are convertible terms ; which position  
 “ the Court itself denies in this very judgment  
 “ by cautiously distinguishing between the con-  
 “ tract and the securities ; holding the former  
 “ strictly legal, the latter clearly void.”

Where an  
 Annuity is  
 avoided, the  
 Law gives  
 an action for  
 the price of  
 it against  
 the vendor.

By the determinations of the King’s Bench in  
*Shove v. Webb*<sup>1</sup> and *Straton v. Rastall*<sup>2</sup> and others  
 it appears to have been settled, that where an  
 Annuity fairly contracted for has been avoided

<sup>1</sup> 1 Term Rep. 732.

<sup>2</sup> 2 Term Rep. 366.

on account of any informality or irregularity under the Annuity Act, the Law raises that sort of implied contract between the parties, as to give to the purchaser an action for the principal money advanced. So in *Shove and Webb*, which was an *assumpsit* for the price given for the Annuity, which had been vacated, the plaintiff recovered the whole sum, as well for the previous debt for hosiery, as for the money paid down to complete the whole of the consideration. And in *Straton v. Rastall*, which was also an *assumpsit* in like manner for the price of an Annuity which had been declared void and brought against the surety in the securities, who had not received any part of the consideration; though the Court did not think the action lay against the surety, who had not received any part of the consideration, though he had signed a receipt for it, yet they seemed to allow, that where money had been received by a man, and the consideration had afterwards failed, the Law raised an implied *assumpsit* in the person who received it, to repay the money as money had and received to his use.

So said *Grose J.* in *Crespigny v. Wittenoom*<sup>1</sup>:  
 "In cases where money has been paid as the  
 "consideration, the Courts order the money  
 "to be restored, when they vacate the Annuity

A doubt  
upon the  
case of  
*Barrett v.*  
*Beauchamp.*

<sup>1</sup> 4 Term Rep. 793.

"deeds."



PART II.  
CHAP. IV.

"-deeds." \* In *Beauchamp v. Barrett* an Annuity had been sold and paid for two years: but being void for want of enrolment, it was agreed, that it should be rescinded: and the question before the Court was, whether under this agreement, the two yearly payments should be deducted from the original price of the Annuity? And Lord Kenyon was of opinion, that both under the agreement and *according to the justice of the case*, the plaintiff was entitled to recover the whole 600l. and interest from the time the Annuity ceased, and the Jury gave damage accordingly. I am unable to reconcile this direction to the Jury with the established principles adopted by the Courts in cases of Annuities becoming void. For it appears from them in the case of a void Annuity, that the implication of Law, which lays the ground of the equitable action for money had and received, and which entitles the vendee to recover his principal money with legal interest, most formally precludes him from demanding any greater advantage under *void securities*. Had indeed the Annuity in question been *valid* and determined by mutual agreement, the case would have differed: for then there would have been no *claim of justice* raised upon a *void foundation*. In *Franco v. Lindo* <sup>2</sup> Buller J.

\* Peake's Nisi Prius Ca. 109. Hill. 32 G. III.

<sup>2</sup> Esp. N. P. Ca. 300. Hil. 36 Geo. III.

said, that in actions for the recovery of the consideration-money, the only question was, *what was really paid?*

How this  
implication  
of Law operates.

Grose J. in *Straton v. Rastall* particularly noticed, that by the subsequent neglect of the plaintiff the bond there was become of no use. And Buller J. put this question “If that contract be-  
“comes void by the act of the plaintiff, on what  
“ground can he recover back the money? For  
“the neglect of the plaintiff cannot raise a debt  
“in a defendant.” Ashburst J. who delivered the opinion of the Court in *Shove v. Webb*, seemed to express his opinion, that if the original contract be in the teeth of the Statute, the Law does not raise such an implied promise, for *ex maleficio non oritur contractus*. Now every case, in which the Statute avoids an Annuity, must either be a case in the teeth of the Statute, or created by the neglect of the grantee. And we have seen, that in neither of such cases does the Law raise an implied *assumpsit*. Evidently the Act could not mean to avoid the securities and leave the contract still subsisting: for this would defeat the avowed purposes of the Act, which were to check the traffic of dealing in these Annuities, and to protect the grantors under hard and oppressive bargains; whereas, if after the Act had once avoided the securities, the contract were to revive, and give fresh remedies to the grantee for enforcing it

PART II.  
CHAP. IV.

Examina-  
tion of the  
two cases of  
*Shove v.*  
*Webb* and  
*Straton v.*  
*Rastall*.

it again against the grantor *toties quoties*, it would raise against him an unceasing system of oppression and vexation, against which no funds, no abilities, no prudence, no justice could protect or defend him.

It here becomes necessary to examine how far the decision of *Shove v. Webb* agrees with the later case of *Straton v. Rastall*. In the first case, the Court said, “that the security was set aside, not “on account of any fraud or defect in the contract itself, but upon a formal defect in making the memorial, or at least it was an innocent mistake of the Law. And taking that “to be the case, when the security was vacated, “the original contract revived.” But it is evident, that this mistake of the Law was wholly on the part of the grantee in not registering a proper memorial: and then this ground of the decision in *Shove v. Webb*, is formally impeached and superseded by what the Court said in *Straton v. Rastall*, viz. “Now in strict principles of Law, “if that contract becomes void by the act of “the plaintiff, on what ground can he recover “back that money? For the neglect of a plaintiff cannot raise a debt in a defendant.” And “by the subsequent neglect of the plaintiff, that “bond is become of no use.” *Große J.* who took three days longer than the other Judges to consider the case particularly noticed, that it was urged,



urged, that "under these circumstances the Law implies a promise by the defendant to repay the money advanced as money had and received to the plaintiff's use. But no case has been cited to shew, that under such circumstances the Law implies such a promise."

There is a very material difference between the contract, under which *Webb* became originally indebted to *Shove* in 40l. 19s. 9d. for hosiery sold upon his credit, and the remainder of the consideration viz. 71l. 17s. 6d. paid to Webb in cash at the time of granting the Annuity. As the first debt was contracted without any reference to an Annuity, there appears no reason why this original contract should be affected by the subsequent negotiation for the Annuity further, than it might have been affected by the failure of any note draught or other security given in payment for the hosiery. Had the action been brought against *Avarne* instead of *Rastall* the surety, then as to 71l. 17s. 6d. the case of *Shove v. Webb* would be the exact case of *Straton v. Rastall*. The decision of the Court turned in fact upon *Rastall's* having received no part of the money: though what was said by *Buller* and *Grose* J. J. applies to the plaintiff's taking advantage of his own neglect or laches to raise thereupon an implied *assumpsit* in his favor. Some misapprehension appears to me to have arisen from inattention to that contract,

Of the real contract for the Annuity being void.

PART II.  
CHAP. IV.

tract, which Mr. Powell contends under these circumstances, the Law *leaves untouched*. For in *Shove v. Webb*, although the securities being declared void, the original contract for goods sold and delivered revived, yet this does not touch the real question under consideration, which is this: Whether, when the Statute avoids the securities, the contract be at the same time avoided or left untouched, and may be enforced by any other means? This evidently goes only to the immediate contract for the Annuity. In *Shove v. Webb* the contract for the Annuity was distinct from that for the hosiery, and the decision proves, that the Court rather looked upon the immediate contract for the Annuity void as well as the securities, by declaring the original contract for the hosiery revived: for the contract for the Annuity in this case was for the payment of 140l. by *Shove* for an Annuity of 25l. during the life of *Webb*: and if this contract be left untouched, although the securities entered into for securing it become void by the act of *Shove* the immediate consequence of supporting this contract will be to give *Shove* a right to call upon *Webb* to enter into fresh and effectual securities for an Annuity of 25l. as the first had failed.

Of the revival of the contract for the Annuity.

The original contract between *Shove* and *Webb* for the hosiery, was totally distinct from their subsequent

subsequent contract for the Annuity. If the security, which *Shove* agreed to take for the liquidation of the debt of 40l. 19s. 9d. were at the time null and invalid, then unquestionably the contract for the hosiery would so far revive as to give him against *Webb* a right of action for the value or price. But if on the other hand the security given to *Webb* were at the time of giving it really good and effectual, and became only void and ineffectual by the laches and neglect of *Shove*; the question will then be, How far *Webb* shall be driven back to the original contract by the act of *Shove* against his will and expose himself to be arrested for the non-payment of a principal sum, which he could not command, instead of an annual payment for which he could provide? If a creditor had taken in payment a good draught upon a solvent person, but neglected to present it whilst it would be paid, his loss of the money upon the person's subsequent insolvency would be owing to his own neglect or laches, but would by no means revive the contract so as to give him a right of action for the same sum against his debtor. Whence I infer *that in no possible case* did the Legislature intend to keep on foot a contract for securing an Annuity at a given price, which might be enforced against the grantor, when it had avoided all the securities given in consequence of that contract, and that  
in



PART II.  
CHAP. IV.

True state  
of the ques-  
tion of the  
contracts  
reviving.

in no actual case can a contract for an Annuity be enforced by a grantee, when by his own misfeasance or neglect without the privity or concurrence and against the will of the grantor the securities, which were once effectual and he had accepted of, have become null and void.

The bare statement of the nature of the three different contracts, which have been referred to and arose in the case of *Shove* and *Webb* will more effectually than the closest reasoning shew, what contract is or is not revived upon the avoidance of the securities by the Statute, in all cases analogous to that. *The first contract was for the price or value of the hosiery*; that never can be put an end to, but by payment or satisfaction in some manner agreed to by the seller. The second contract was *expressly between buyer and seller for an Annuity of 25l. during the life of the seller in consideration of 140l.* and this is the contract, if any, which I presume Mr. Powell contends for being left untouched, though the securities fail or become void. The third contract, which if it existed at all, was implied by law, and was, *that upon the failing or avoidance of the Annuity purchased, the seller shall repay the consideration or purchase-money back with interest.* Now if we reflect, that the only motive, which can induce a person to yield to the ruinous terms of selling an Annuity at the present market price, which varies widely from the

the *real value*, is to avoid being thrown into gaol for the non-payment of a sum of money larger, than he has means to command. Having therefore contracted with his creditor to satisfy him, and the creditor having consented to be satisfied with a species of payment by instalments, which every Annuity is, the *legal and equitable question* hereupon arises: Can the creditor by his own neglect laches means or procurement without the consent or concurrence and greatly to the prejudice of the debtor annul at will the Annuity securities and contract, and drive the debtor back to his original desperate situation of owing a debt, which he cannot discharge, and for emerging out of which, he had legally contracted with his creditor to pay such an exorbitant consideration annually during his life? This is neither the case of an estate sold under a bad title, nor of money borrowed under void securities. In the first of these cases, the vendor must return the purchase-money, but he takes back his estate: in the second, having actually borrowed and received a specific sum, which the other lent, (and every loan is a contract for repayment) he must either repay or effectually secure: and in neither case is he injured: and in both he must do justice. But in the case of an Annuity the vendor appears to me actually to contract with the purchaser, that he never shall

PART II.  
CHAP. IV.

Of the pro-  
curation  
money un-  
der the se-  
venth sec-  
tion of the  
Act.

The limi-  
tation of the  
brokerage  
confined to  
Annuities  
granted for  
pecuniary  
considera-  
tions.

be liable to be called upon for the principal, particularly at the will of his creditor ; who on his side shall not profit of his own contempt or neglect of the law.

Every person, who has unfortunately either been concerned for himself or his friend in an Annuity transaction must be convinced, that it is not from the infrequency of the occurrence, that so few cases have come before the Court upon the seventh section of the Act : for I shall not wander widely from the truth by asserting that 5l. per cent are as frequently taken for soliciting or procuring *the loan* (as the Act singularly calls it) or for the brokerage of any money, that shall be advanced for the price of an Annuity, as 10s. per 100l. as the Act directs. We have before seen, in *Broomhead v. Eyre*, that where a solicitor was the purchaser of the Annuity although not in his own name (as in that case Mr. Woodgate was) the usual commission for procuration was not allowed. And we see from the case of *Crespigny v. Wittenoom and another*<sup>1</sup>, where an Annuity was granted in consideration of the grantee's giving up a lucrative business to the grantor, that the Court of King's Bench held, that it was not such an Annuity as was necessary to be registered. And Mr.

<sup>1</sup> 4 Term Rep. 790.



Justice *Buller* in delivering his opinion said, that  
 “it was impossible to suppose, that the Legisla-  
 “ture intended to prohibit a broker receiving  
 “any premium for his trouble in negotiating  
 “such an Annuity as that, and yet that his  
 “premium could not be estimated according to  
 “the directions of that clause of the Act, which  
 “limits the fees to be taken by persons procu-  
 “ring money for Annuities.”

Indictment  
 for excessive  
 brokerage.

In the *King v. Gilham*<sup>1</sup> the defendant was in-  
 dicted on the seventh clause of the Annuity Act  
 for having taken 332l. 10s. as a gratuity and re-  
 ward and for brokerage for soliciting and pro-  
 curing the loan of the sum of 2450l. At the trial  
 it was objected, that the evidence did not sus-  
 tain the indictment: the charge being, that the  
 322l. 10s. were paid for brokerage of the sum of  
 2450l.; and the evidence being, that the defen-  
 dant at the time of the money paid, said that  
 100l. were for the writings (he being an at-  
 torney and having produced them), 100l. more  
 by way of present or gratuity, and five per cent.  
 on the whole sum, viz. 122l. 10s. Lord Kenyon  
 over-ruled the objection, thinking it not mate-  
 rial: but left it to the Jury to consider, whether  
 these were not mere pretences to evade the Sta-  
 tute, and the Jury so found. A rule *nisi* was after-  
 wards obtained for a new trial, on the ground,

<sup>1</sup> 6 Term Rep. 265.

PART II.  
CHAP. IV.

Not neces-  
sary to spe-  
cify the  
*quantum* of  
the excess.

No pretext  
shall cover  
excessive  
brokerage.

that the verdict was against law and evidence; and after a very full and able argument on both sides, *Lord Kenyon* Ch. J. said, "The offence here consists in taking more than 10s. for every 100l. for brokerage or procuring the loan: and for this purpose, the *quantum* of the excess is immaterial. In the case of Usury, to which this has been compared, it is material, because in setting forth a contract in pleading, it is necessary to set it out correctly, and prove it as set forth. But here the offence is the same, whether more or less be taken, and the judgment does not depend on the *quantum* taken. I cannot get over the case cited from Lord Raymond<sup>1</sup>. If this objection were to be allowed, it would repeal the Statute altogether." *Grose* J. "In cases of this kind the question must be left to the Jury, to consider whether the defendant really took more than 10s. in 100l. by way of brokerage: for if he colorably take a larger sum, under pretence, that the excess above 10s. was received for another purpose, that will not avail him. In the case of Usury it is always left to the Jury to say, whether the sum taken, though ostensibly for

<sup>1</sup> Lord Raymond 149. *Rex v. Burdet*; which was an indictment for extortion, in which Holt Ch. J. said, "If the indictment be for taking extorsively 20s. and there be only proof of 1s. yet the defendant is guilty."

“another purpose, was not in reality taken as  
 “usurious interest.”

PART II.  
 CHAP. IV.

*Lawrence J.* “The question here is not  
 “whether the witness did or did not prove,  
 “that the defendant had taken 322l. 10s. for the  
 “brokerage, but whether he did not prove, that  
 “more, than 10s. in 100l. were taken by the  
 “defendant, and if that were proved, it was suf-  
 “ficient to convict the defendant.” The rule  
 was therefore discharged.

The eighth and last section of the Act con-  
 sists, as I have before observed, in the exception  
 of certain cases, to which the Act does not ex-  
 tend: two only of which have come before the  
 Court. The first of these came before Lord  
 Chancellor *Thurlow* by way of exception to a  
 report of the Master in *Shrapnel v. Vernon*<sup>1</sup>, who  
 had rejected the claim of an Annuitant under a  
 trust-deed, because it was not regularly registered  
 under the Annuity Act. Whereas when it had  
 appeared to his Lordship, that the Annuity was  
 secured upon lands of greater annual value,  
 than the Annuity, of which the grantor was  
 seised at the time of the grant in fee-simple in  
 possession, of an *equitable* though not of a *legal*  
 estate, he said:

Eighth sec-  
 tion of the  
 Act.

“I am of opinion, that the Master was wrong

<sup>1</sup> 2 Bro. C. C. 268.



PART II.  
CHAP. IV.

An equitable  
as well as le-  
gal fee is  
within the  
exception.

“ in not admitting the claim. I think an estate  
“ in equity in fee-simple, or in fee-tail, is in this  
“ respect the same, as if it were a legal estate.  
“ In many Acts of Parliament an equitable  
“ estate is considered the same, as if it were  
“ a legal estate. The words *seised in law or*  
“ *equity*, in the Qualification Act shew, that the  
“ word *seised* is applicable to both. I do not  
“ fully comprehend the Act, as I do not see why  
“ the Annuity should not be registered as well  
“ in the case of a man having a fee-simple or  
“ fee-tail, as where he has a less estate. But the  
“ Act certainly does not say, that it shall be a  
“ value above reprises; therefore if there be an  
“ estate in fee or tail, though mortgaged for it's  
“ whole value, it is within the exception of the  
“ Act, &c. The only question is, whether the  
“ word *seisin* will extend to being seised in  
“ equity, which if I am not mistaken in point  
“ of law, it will.”

Exceptions  
to be very  
strictly con-  
strued.

The strict literal construction, which Lord  
Thurlow in this case put upon this section of the  
Act certainly establishes the general rule, for  
construing it: and as his Lordship says, if there  
be an estate in *fee-simple* or *fee-tail*, though it be  
mortgaged for it's whole value, it is within the  
exception of the Act, so upon like principles did  
I argue in the foregoing Chapter, that any powers  
of appointment, which to some purposes might  
be

be equivalent to a fee-simple, as long as there was not an estate in fee-simple or fee-tail, could not draw a case within the exception of the Act. And as the Act is admitted by all to favour and protect the grantors of Annuities against hard bargains, the equity of the Act ought certainly to be extended more to keep them out of, than to draw them within the exceptions of it.

The next case came before the Court of King's Bench in *Crespigny v. Wittenoom*<sup>1</sup>, where the defendants had covenanted to pay to the plaintiff an Annuity of 40*l.* for the life of the plaintiff, in consideration of his giving up his business of a proctor in their favor. In the action of covenant on the articles of agreement the defendants pleaded the non-registery of the articles under the Annuity Act: to which plea there was a general demurrer and joinder. And after argument on both sides,

Exception  
of Annuities  
not granted  
for pecuni-  
ary consid-  
erations.

Lord Kenyon Ch. J. said, "It is apparent from the preamble, and the different clauses of the Act, that the Legislature did not intend, that there shall be any memorial of an Annuity like the present. The preamble states the mischiefs of granting Annuities for small considerations by improvident persons; and those mischiefs are guarded against by the several clauses in the Act, as far as human prudence can go.

Lord Ken-  
yon's opi-  
nion.

<sup>1</sup> 4 Term Rep. 793.

PART II.  
CHAP. IV.

“ It is evident, that the Act was intended as a  
 “ check against hard bargains. The third clause  
 “ expressly says, that the consideration shall be  
 “ paid in money only. The next section indeed  
 “ says, that if any part of the consideration be  
 “ paid in notes, and those notes be not after-  
 “ wards paid, the Court may order the deeds  
 “ securing the annuity to be cancelled. The  
 “ Court therefore were bound by the positive  
 “ words of the Act to declare, that Annuities,  
 “ the consideration of which was paid in notes,  
 “ must be registered pursuant to the Act. But  
 “ in both these cases the Annuity is granted in  
 “ consideration of something paid to the grantor;  
 “ and no decision has extended the provisions of  
 “ the first clause beyond these two cases. Here  
 “ either the Annuity was absolutely void, be-  
 “ cause not granted for either of the considera-  
 “ tions mentioned in the third and fourth sec-  
 “ tions, and then no registry of it could make  
 “ it good; or it was such an Annuity as could  
 “ not be registered according to the Act. But  
 “ it is too much to say, that the Annuity is void  
 “ in itself; and I think that neither the spirit nor  
 “ the words of the Act require, that it should be  
 “ registered. As to the argument, *exceptio probat*  
 “ *regulam*; it seems to me that the anxiety of  
 “ some Members of the House induced them to  
 “ insert the last clause, after the Act was first  
 “ drawn;



"drawn"; but I think that the first section  
"could never have been extended to the cases  
"mentioned in the last, if they had not been  
"excepted."

Buller J. "I agree, that the preamble cannot  
"control the enacting part of a Statute, which is  
"expressed in clear and unambiguous terms.  
"But if any doubt arise on the words of the en-  
"acting part, the preamble may be resorted to  
"to explain it. Now the general intention of the  
"Legislature may be collected from the pre-  
"amble, which recites, '*the pernicious practice of*  
"*raising money by the sale of Life Annuities*;' and  
"the body of the Act is also confined to An-  
"nuities granted on consideration of money or  
"notes. By another clause too, it is evident that  
"the Act does not extend to this case. The  
"seventh section prohibits brokers taking more  
"than 10s. for every 100l. actually paid. It is  
"impossible to suppose, that the Legislature in-  
"tended to prohibit a broker receiving any pre-  
"mium for his trouble in negotiating such an  
"Annuity as the present; and yet his premium  
"cannot be estimated according to the direc-  
"tions of that clause. With regard to the words  
"in the excepting clause, 'without regard to

J. Buller's  
opinion."

These exceptions were not in the first bill; though they  
are to be found in the Parliamentary Office in the hand-  
writing of the framer of both bills, as I before observed.

"pecuniary

PART II.  
CHAP. IV.

“pecuniary considerations,’ I think they were  
“added to shew the sense in which the word  
“‘voluntary’ was before added ; and that the  
“meaning of that part of the clause is this ; that  
“any Annuity granted for any other than a pe-  
“cuniary consideration shall for the purposes of  
“the Act, be considered to be a voluntary An-  
“nuity.”

J. Grose’s  
opinion.

*Grose J.* “Though the preamble cannot con-  
“trol the enacting clause, we may compare it,  
“with the rest of the Act, in order to collect the  
“intention of the Legislature ; and I think it is  
“apparent from the whole of this Act, that it  
“was not their intention to extend it to a case  
“like the present. In cases where money has  
“been paid as the consideration, the Courts or-  
“der the money to be restored, when they vacate  
“the Annuity deeds : but the business, the re-  
“linquishment of which was the consideration  
“of granting this Annuity, we cannot order to  
“be restored.”

---

# APPENDIX.

---



APPENDIX

Pa

P

que  
hab  
qu  
tul  
qua  
alie  
On  
illi  
pu  
eo  
de  
qu  
no  
fu  
pl  
ag  
m  
re

## APPENDIX.

---

### Nº. I.

*Parts of the BREVE of Benedict XIV. dated 1<sup>st</sup>  
November 1745, upon Usury.*

**P**ECCAT genus illud, quod Usura vocatur, quodque in contractu mutui propriam suam sedem et locum habet, in eo est repositum quod quis ex ipso met mutuo, quod suapte naturâ tantumdem duntaxat reddit postulat, quantum receptum est, plus sibi reddi velit, quam est receptum; ideoque ultrâ sortem, lucrum aliquod, ipsius ratione mutui sibi deberi contendat. Omne propterea ejusmodi lucrum quod sortem superet, illicitum et usurarium est. Neque verò ad istam labem purgandam ullum accersiri subsidium poterit, vel ex eo, quod in lucrum non excedens et nimium, sed moderatum; non magnum sed exiguum sit; vel ex eo quod is a quo id lucrum solius causâ mutui deposcitur, non pauper sed dives existat; nec datam sibi mutuò summam relicturus otiosam, sed ad fortunas suas amplificandas, vel novis coemendi prædiis, vel quæstuosis agitandis negotiis, utilissimè sit impensurus. Contra mutui siquidem legem, quæ necessariò in dati atque redditu æqualitate versatur, agere ille convincitur quisquis,

quis, eâdem æquitate semel positâ, plus aliquid à quolibet, vi mutui ipsius cui peræquale jam satis est factum, exigere adhuc non veretur; proindèque, si acceperit, restituendo erit obnoxius ex ejus obligatione justitiæ, quam commutativam appellant, et cujus est, in humanis contractibus æqualitatem cujusque propriam, et sanctè servare et non servatam exactè reparare.

Neque item negatur, posse multoties pecuniam ab unoquoque suam, per alios diversæ prorsus naturæ a mutui naturâ contractus, rectè collocari et impendi, sive ad proventus sibi annuos conquirendos, sive etiam ad licitam mercaturam et negotiationem exercendam, honestaque indidem lucra percipienda.

Quemadmodum verò in tot ejusmodi diversis contractuum generibus, si sua cujusque non servatur æqualitas, quidquid plus justo recipitur si minus ad usuram (eo quòd omne mutuum tam apertum quàm palliatum absit) at certè ad aliam veram injustitiam, restituendi onus pariter afferentem, spectare compertum est; ita, si ritè omnia peragantur, et ad justitiæ libram exigantur, dubitandum non est quin multiplex in iisdem contractibus licitus modus et ratio suppetat humana commercia et fructuosam ipsam negotiationem ad publicum commodum conservandi ac frequentandi.

Nihil etiam decernimus modo de aliis contractibus, pro quibus theologi et canonum interpretes in diversas abeunt sententias . . . . Qui ab omni usuræ labe se immunes et integros præstare volunt, suamque pecuniam ita alteri dare, ut fructum legitimum solummodo percipiant,



cipiant, admonendi sunt ut contractum instituendum antea declarent, et conditiones inferendas explicent, et quem fructum ex eâdem pecuniâ postulent. Hæc magnoperè conferunt, non modò ad animi sollicitudinem et scrupulos evitandos, sed ad ipsum contractum in foro exteriori corroborandum. Hæc etiam aditum intercludunt disputationibus, quæ non semel concitandæ sunt, ut clarè pateat utrùm pecunia, quæ rectè data alteri esse videtur, reverà tamen palliatam usuram contineat.

## No. II.

*Part of the BREVE of Benedict XIV. dated 7th September 1745, by which he regulated the rate of Interest, for the money which might be borrowed by certain Corporations throughout the Papal dominions.*

Ci è stato riferito da persone digne de tutta fede, che alcuni de' nostri sudditi nelle gravi angustie, in cui si sono trovate le comunità del nostro Stato Ecclesiastico, per l'ultimo passaggio ed'accantonamento delle truppe straniere che in commincio l'anno 1742 scordati affatto dell' obbligo, che a ciascuno impone la natura medesima, in vece di sollevare et soccorrere à tutto lor potere la patria, ed il principato, traitte e trasportati d' all' ingordigia di vil guadagno, non hanno avuto rossore di opprimere, ed aggravare maggiormente le comunità di esso nostro Stato con usure esorbitanti di cinque, sei, sette, e ancora otto, e nove per cento, abusando dell'estremo bisogno, in cui elle erano di trovar danaro; anzi taluno di essi nostri sudditi rivolgendo la comune e pubblica calamita in privato, e vergognoso mercimonio, aver preso da altri danaro a minore interesse per poi dar lo alle suddette comunità a più gravi e maggiori usure. Quindi e che volendo noi da un cauto comprimere la sopperchia avidità di costoro, ed all'altro isgravare per quanto ci e possibile le suddette comunità dall'frierito ingiusto peso. Di nostro moto proprio, certa scienza è pienezza della nostro sovranna potestà,

potestà, ordiniamo, è comandiamo che tutti è fin-  
goli cense creati ed imposti oppur anche cambi, ed' altri  
debiti fruttiferi passimamente contratti dal giorno è  
tempo che intrarono le truppe essere dentro confini  
dello nostro Stato Ecclesiastico, da qualunque commu-  
nità è università di esso nostro Stato, compresevi anche  
le quattro legazioni di Bologna, Ferrara, Romagna  
è d' Urbino, come pure tutti luoghi baronali (eccettuan-  
do solamente la legazione d'Avignone è il diecato di  
Benevento) . . . . Sieno è s'intendano dal giorno d'og-  
gi in poi creati imposti è contratti alla sola ragione di  
scudi quattro per cento, è non più, come noi in virtu  
della presente cedola di nostro moto proprio da ora in  
più li riduciamo è moderiamo.



## No. III.

*Two Charters of Liberties and Privileges granted  
by King John to the Jews in the Second Year  
of his Reign (A. D. 1201.)*

JOHANNES, Dei gratia, &c. “Sciatis nos concessisse omnibus Judæis Angliæ et Normaniz, libere et honorificè habere residentiam in terrâ nostrâ, et omnia illa de nostris, et omnia illa, quæ modo rationabiliter tenent in terris et feodis et vadiis akatis suis et quod habeant omnes libertates et consuetudines suas sicut eas habuerunt tempore prædicti regis H. avi patris nostri melius et quietius et honorabilius, et si querela orta fuerit inter Christianum et Judæum, ille qui alium appellaverit ad querelam suam dirationendam, habeat testes, scilicet legitimum Christianum et Judæum. Et si Judæus de querelâ suâ breve habuerit, breve suum erit ei testis. Et si Christianus habuerit querelam adversus Judæum sit judicata per pares Judæi. Et cum Judæus obierit, non detineatur corpus suum super terram, sed habeant homines pecuniam suam et debita sua, ita quod mihi non disturbetur, si habuerit hæredem qui pro ipso respondeat et rectum faciat de debitis suis, et de forisfacto suo. Et liceat Judæis omnia, quæ eis apportata fuerint sine occasione accipere et emere, exceptis illis quæ de ecclesiâ sunt et panno sanguinolento. Et si Judæus ab aliquo appellatus fuerit sine teste, de illo appellatu erit quietus solo sacramento suo super librum suum, et de appellatu illarum

illarum rerum, quæ ad coronam nostram pertinent, similiter quietus erit solo sacramento suo super rotulum suum. Et si inter Christianum et Judæum fuerit dissensio de accommodatione alicujus pecuniæ, Judæus probatum catallum suum et Christianus lucrum. Et liceat Judæo quietè vedere vandium, postquam certum erit, eum illud unum annum et unum diem tenuisse. Et Judæi non intrabunt implacitum nisi coram nobis aut coram illis qui curias nostras custodierint, in quorum ballivis Judæi manserint. Et ubicunque voluerint cum omnibus catallis eorum sicut res nostræ propriæ, et nulli liceat eas retinere, neque hoc eis prohibere. Et præcipimus quod ipsi quieti sint per totam Angliam et Normaniam de omnibus consuetudinibus et theoloniis et modiatione vini sicut nostrum proprium catallum. Et mandamus vobis et præcipimus quod eos custodiat et defendatis et manu-tenetis, et prohibemus ne quis contra chartam istam de his supradictis eos in placitum ponat super forisfacturam nostram, sicut charta regis H. patris nostri rationabiliter testatur. Teste T. Humf. filio Petri com. Essex. Willielmo de Marescal. com. de Pemb. Henr. de Bohun com. de Hereford. Robert. de Turnham, Willielmo Brywer &c. Stat. per manum S. Well. archidiac. apud Marleberg decimo die Aprilis anno regni nostri secundo."

JOHANNES, Dei gratia, &c. Sciatis nos concessisse et præsentis cartæ nostræ confirmasse Judæis nostris in Angliâ ut excessus, qui inter eos emerferint, exceptis iis qui ad coronam et justitiam nostram pertinent et de morte hominis et machinio, et de assaltu præmeditato et de fracturâ domûs et de raptu et de latrocinio et de combustionibus et de thesauris, inter eos deducantur

tur secundum legem suam, et emendentur, et justitiam suam inter seipso faciant. Concedimus etiam eis, quod si quis eorum alium appellaverit de querelâ, quæ ad eos pertineat, Nos neminem compellemus ad testimonium cuiquam eorum contra alium exhibendum; sed si appellator rationabilem et idoneum testem habere poterit, eum secum adducat. Si quod verò opus sceleratum et apertum inter eos emerferit, quod ad coronam nostram vel ad justitiam pertineat, sicut de prædictis placitis coronæ licet nullus eorum noster appellator fuerit, Nos ipsam querelam faciemus per legales Judæos nostros Angliæ inquiri sicut charta regis H. patris nostri rationabiliter testatur. Teste G. filio Petri com. Essex, Willielmo Mareschallo com. de Pembr. Hen. de Bohun com. de Hereford, Petro de Pratell, Roberto de Turnham, Willielmo de Warren. Hugo de Nevil, Roberto de Veteri Ponte. Dat. per manum S. Well. archidiacon. apud Merleberg, decimo die Aprilis anno regni nostri secundo.



## No. IV.

*The Grant or Charter by which King John appointed Jacob of London High Priest of all the Jews in England, dated at Rouen 31<sup>st</sup> July, 1 Joan. (A. D. 1199.) within two Months after he ascended the Throne.*

**R**EX omnibus fidelibus suis et omnibus et Judæis et Anglis salutem. Sciatis nos concessisse et præsentì chartâ nostrâ confirmâsse Jacobo Judæo de Londoniis presbytero Judæorum presbyteratum omnium Judæorum totius Angliæ, habendum et tenendum, quamdiu vixerit liberè et quietè et honorificè et integrè, ita quod nemo ei super hoc molestiam aliquam aut gravamen inferre præsumat. Quare volumus et firmitèr præcipimus, quod eidem Jacobo, quoad vixerit presbyteratum Judæorum per totam Angliam garantetis, manuteneatis, et pacificè defendatis. Et si quis ei super eo forisfacere præsumpserit, id ei sine delatione (salvâ nobis emendâ nostrâ) de foris-facturâ nostrâ emendari faciatis tanquam dominico Judæo nostro, quem specialitèr in servitio nostro retinuimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis, aut coram capitali justiciario nostro, sicut charta regis Richardi fratris nostri testatur. Teste S. Bathoniensi episcopo, &c. Dat. per manus H. Cantuariensis archiepiscopi cancellarii nostri apud Rothomagum, 3<sup>1</sup> die Julii anno regni nostri primo.

## No. V.

*The Statute de Judaismo as translated by William Prynne.*

1. **F**OR that the King hath seen, that many mischiefs and disherisons of honest men of this land have hap-  
pened by the Usuries, which the Jews have made  
therein in times past and that many sins have therein  
risen from thence, albeit he and his ancestors have  
had great profit from the Jews both now and in times  
past: notwithstanding this for the honour of God and  
for the common benefit of the people, the King doth  
ordain and establish, that no Jew hereafter shall take  
ought for Usury upon lands rents nor upon other  
things; and that no Usury shall run from the feast of  
St. Edward last past and before; but that the cove-  
nants before made shall be held, save only that the  
Usuries themselves shall cease. Provided that all those  
who are indebted to Jews upon pawns moveable shall  
discharge between this and Easter at furthest; and if not,  
let them be forfeited. And if any Jew shall take Usury  
against this establishment, the King neither by himself  
nor any of his officers will not intermeddle to cause him  
to recover his debt (or use) but will punish him at his  
pleasure for the trespassse, and shall do right to the Chris-  
tian to recover his gage.

2. And it is provided that the distresses for the debt  
of Jews shall not hereafter be so grievous, that the  
moiety of lands and chattels to the Christians shall not  
remain for their sustenance. And that no distress shall  
be

be made for the debt of a Jew upon the heir to the debtor named in the charter of the Jew, nor upon other which holds the land which was the debtor's, before the debt shall be dereigned and acknowledged in Court. And if the sheriff or other bailiffs by commandment of the King ought to make seizin to a Jew, to one or more, for their debt, of chattels or of lands to the value of the debt, the chattels shall be praised by the oath of honest men, the chattels shall be delivered to the Jew or Jewesse or to their attorney to the value of the debt. And if the chattels be not sufficient, the lands shall be extended by the same oath, before that the seisin shall be delivered to the Jew or Jewesse, every one according to the value : and so that they may after know certainly the debt is discharged, that the Christian afterwards may then have his lands : saving to the Christian for ever the moiety of his lands, and of his chattels for his sustenance as afore is said, and the chief house.

3. And if any thing stolen at this hour shall be found in the possession of a Jew; and any will sue, let the Jew have his summons, if he may have it; and if not he shall answer so, that he shall never be privileged for it otherwise than a Christian.

4. And that all the Jews shall be residents in the cities and in the boroughs, which are the King's own, where the chest for the Jew's indenture is wont to be. And that every Jew after he is past seven years of age shall carry a sign or badge in his chief garment; that is to say in form of two talles of yellow taffety, of the length of six fingers, and breadth of three fingers (or handfulls). And that every one after he is past twelve years shall pay three-pence the poll every year to the



King, which shall be paid at Easter; and this shall be intended as well of women as of men.

5. And that no Jew shall have power to infeoff another Jew nor Christian of their houses, rents or tenements, which they have now purchased nor to alien them in any manner, nor to make an acquittance to any Christian of his debt, without the special license of the King, until the King hath otherwise ordained.

6. And because Holy Church wills and suffers, that they should live and be protected, the King takes them into his protection, and gives them his peace, and wills, that they shall live, and shall be guarded by his sheriffs, and his other bailiffs, and by his lieges; and commands that none shall do them harm, injury, nor force in their bodies, nor in their goods, moveables, or immoveables. And that they shall not be impleaded sued nor challenged in any court but in the King's Court wheresoever they are.

7. And that none of them shall be obedient respondent nor render rent, but to the King, and his bailiffs in his name, if it be not of their houses, which they now hold rendering rent, saving the right of Holy Church.

8. And the King grants them, that they shall live in their lawful merchandizes, and by their labour, and that they shall converse with the Christians for lawful merchandizing in selling and in buying. But yet that by this priviledge nor any other, shall they be levant (rising) or couchant (lying down) amongst them. And the King will not, that by reason of their merchandize, that they should be in lots nor scots, nor tallage with those of the cities or boroughs where they remain, seeing they

are tailable to the King as his own vassals, and to none other.

9. Moreover the King grants them that they may buy houses and curtelages in the cities or boroughs where they reside, so as they hold them in chief of the King; saving to the lords the services due and accustomed.

10. And that they may take lands to farm for term of six years, or under, without taking homages or fealties or such manner of service of a Christian, and without having advowson of Holy Church, for to support their life in the world, if they know not how to merchandize, or be unable to labour. And this power for to take lands to farm shall not endure to them but fifteen years from this time forth to come.

## No. VI.

*A Writ of Safe Conduct to the Jews ordered into Banishment 11th July, 18 Ed. I. (A. D. 1290).*

**R**EX Vic. G. Cum Judæis regni nostri universis certum tempus præfixerimus a regno illo transfretandi: nolentes quod ipsi per ministros nostros aut alios quoscunque, aliter quam fieri consuevit indebitè pertrectentur: tibi præcipimus, quod per totam ballivam tuam, publicè proclamari et firmitè inhiberi facias, ne quis eis intra terminum prædictum injuriam, molestiam, damnum inferat seu gravamen. Et cum contingat ipsos cum cattallis suis, quæ eis concessimus, versus partes London, causâ transfretationis suæ dirigere gressus suos, saluum et securum conductum eis habere facias sumptibus eorum. Proviso, quod Judæi prædicti, ante recessum suum, vadia Christianorum quæ penes se habent, illis quorum fuerint, si ea acquitare voluerint, restituant, ut tenentur. Teste Rege apud Westminst. 18 die Julii anno 18 Ed. I.



## No. VII.

*A Parliamentary Record by which the Prior of Bridlington was ordered to pay 300l. to the King which he owed to a Jew before their Exile. 21 Ed. I. (A. D. 1293).*

ET quod prædictus Prior cognoscit quod prædicta pecunia præd. Judæo debebatur, viz. 300l. nec ei solvebatur ante exilium Judæorum; et quicquid remansit reorum debitis aut catallis in regno post eorum exilium Domino Regi fuit: consideratum est quod Dominus Rex recuperet pecuniam prædictam: et dictum est eidem Priori, quod non exeat villâ antequam Domino Regi de prædictâ pecuniâ satisfaciat. Et respondeat Johannes Archiepiscopus Eborum, quia præcepit dicto Priori solvere valetto suo prædictam pecuniam in deceptionem Regis, contra sacramentum et fidelitatem suam Domino Regi datam. (Idem in alio Rot. an. 22 Ed. I. Rot. 5).

## No. VIII.

N<sup>o</sup>. VIII.*Provisions de Merton, cap. 5.*

**L**IKEWISE it is provided and granted by the King that from henceforth Usuries shall not run against any being within age from the time of the death of his ancestor (whose heir he is) unto his lawful age ; so nevertheless that the payment of the principal debt with the Usury, that was before the death of his ancestor (whose heir he is) shall not remain.

N<sup>o</sup>. IX.

## No. IX.

*An Act against Chevizance and Usury.*

*3 Hen. VII. c. 5.*

ITEM, for as much as importable damage losse and impoverishing of this realm is had by damnable bargains grounded in Usury coloured by the name of New Chevifance contrary to the law of natural justice, to the common hurt of this land, and to the great displeasure of God Our Sovereigne Lord the King, for the reformation thereof and of all corrupt and unlawful bargains by the assent of the Lords spiritual and temporal and the Commons in his said parliament assembled and by authority of the same hath ordained and enacted, That if hereafter any bargaine covenant by buying of any obligation bill or any pledges put into suretie, or by bill or otherwise by the name of dry exchange or otherwise whereby any certain sum shall be lost by any covenant or promise between any person or persons by themselves or any other to their knowledge within this realme or if any bargain or loan whereby any of the party should lose or pay for any sum certain : that is to say for having an 100l. in money or merchandize or otherwise and therefore to pay six score pounds or more or less in and for any more or less summe after any maner rate, that all such bargaine covenants promise and sureties therefore made and all things thereof depending bee utterly voyde and of none effect. And over this it is ordained by the same authority that if any merchandize obligations billes or plate  
be



be promised to be delivered upon such corrupt bargain and delivered, or delivered and had again to him that ought such merchandizes, obligations bills or place or knoweth by any other man by assent agreement or knowledge in any manner forme of him or his factor, or broker that such merchandizes ought or privie to such bargaines, that all such bargaines, covenants, promises, and all sureties therefore made be utterly voyde. And the seller owner bargainer or promiser of such corrupt bargaines or goods, shall lose for any such bargain made by him or his factour 100l. And whosoever will sue therefore to have an action of debt: in which the party shall not wage his lawe, the King to have the one halfe, and he that will sue the other half. And forasmuch as these corrupt bargaines be most usually had within cities and burroughs having authority to try all matters and causes growen and had within the said cities and boroughes: and if at any such defaults, should there bee tryed, perjury by likelineffe thereby should grow and little of the premises to be founde. Therefore it is ordeined by the said authoritie that as well the Chancellour of England for the time being, have authority and power to examine all manner corrupt bargains promises lones or sales growen and had of any of the premises, and thereupon by examination to heare and determine the same, and to give like judgment and make like execution thereof as the matter were tryed and found at the parties suit, in any such action of debt by the course of the common law as the Justices of the Peace of any shire next adjoining to any citie or burrough where such defaultes be of any of the premises. And they to make like process against any man thereof endyted afore them of any of the premises, as they should

or ought to doe against any man that were endyted afore them of any riot or trespasse and to determine it. And if any man be found guilty afore them of any of the premises to forfeit the aforesaid peine of 100l. reserving to the Church (this punishment notwithstanding) the correction of their soulls according to the laws of the same.

## No. X.

*An Act concerning Exchange and Re-change Chev-  
vizance Usury and Brokers. 3 Hen. VII. c. vi.*

ITEM, forasmuch as there hath growen and daily groweth great displeasure of God, and great hurt of the King our Sovereigne Lord, and to this his realme by and for the inordinate changes and re-changes that have been of long time used and yet continued in this faide realme without authoritie given of the King to such changing and re-changing. For remedie whereof many noble statutes against the same made whereof one special statute was in the xv. yere of King Edward the Third made for the same remedie and in Henry the Fourth Henrie the Fifth and in Henry the Sixth days; wherefore the King, our Sovereigne Lord will, that all such statutes be put in due execution from henceforth. And that no man make any exchange without the King's license, ne shall make any exchange or re change of money, to be payed within this land but only such as the King shall depute thereunto to keepe make and answer such exchanges and re-changes, upon the peines in the same Statute of King Richard contened. And over that it is ordeined by the King our Sovereigne Lord by the assent of the Lords spiritual and temporall and Commons in his said parliament assembled and by authoritie of the same that all unlawful Chevifances and Usury be dampned and none to be used, upon peine of forfeiture of the value of the money or goods so chevifed or lent the same forfeiture to run on  
the



the feller and lender thereof. Also forasmuch as divers English and estrangers brokers, which be named and assigned to occupy lawful brokages be inducers and bargain-makers of unlawful Chevifance and Usury and in some part of unlawful Exchanges to the hurt of our said Sovereigne Lord and this his said realme : therefore it is enacted and established by the said authoritie, that all such brokers dealing unlawfully of any of the premises be put apart and never to occupie as brokers within this his realme as they may be espied and found in cities boroughes and townes, by maiors bayliffes or any of them or of their ministers where such bargaine is used. And that every broker that is found defective in making of unlawful brokage, shall forfeite for every defaulte 20l. and have imprisonment of half a yere. And furthermore to be punished by the pillorie or otherwise to their open rebuke and shame, the King to have the one halfe of every of the said forfeitures, and the partye that will sue, the other half of the same, by action of debt by the common lawe and the defendant in the same action bee not admitted to his lawe noressoine nor protection be for the same defendant allowed.

## No. XI.

*An Act for repealing the 3d of Henry VII. and making more effectual Provision against Usury. 11th Hen. VII. c. viii.*

PRAIEN the Commons in this present parliament assembled, that wherein the parliament holden at Westminster the third yeere of your most noble reigne, it was enacted ordained and established, that of for and upon bargaines grounded in Usury coloured by the meanes of new chevesaunce or exchange contrary to the law of natural justice to the great displeasure of God and our said Sovereigne Lord and the common hurt of this his land, that certaine punishments and penalties should runne upon the offenders in that behalf, as in the said Act more at large is contained, which Act was and is so obscured dark and defuse, that the true intent of the makers thereof cannot perfiteely be understood; wherefore and for the plain explanation and declaration of Usury and penalties to be hereafter executed upon the offenders in the same: the King our soveraigne lord by the assent and advice of the Lords spirituall and temporall and the Commons in this present parliament assembled and by authoritie of the same ordaineth enacteth and establisheth, that all manner of person or persons lending money to and for a time, taking for the same lone any thing more besides or above the money lent by way of contract of covenant at the time of the same lone, saving lawful penalties for

non-

non-paiement of the same money lent, and that all manner of person and persons which heereafter sell any goods cattels or merehandizes to any person or persons being in necessitie, and the seller himself or by his broker or factor in that behalfe againe buy the same goods cattels or merchandizes of the same person, to whom they were sold being in necessity of his broker or factor in that behalf within three months after they be sold for a less sum of money than they were sold for, knowing the same goods so bought again afore by the same buyer or buyers to be sold after the form aforesaid: and that every person and persons lending or taking any money to any person or persons to a certain time, and taketh lands tenements or any hereditaments or other bonds for perfite suretie and sure payment of his or their money lent at the time assigned, without condition or adventure: and also at the time of the same loan or taking of the said money covenanteth appointeth or contracteth, covenanten appointen or contracten, that he or they that lend or take money, shall have the revenues and profites of the lands, tenements or hereditaments of him that so borroweth or taketh money by a certain time: that then every person heereafter upon any of the premisses convicted, forfeite the moiety of the value in money of the said money goods cattels merchandizes, as is above said, so sold or lent after such value as they have been sold or lent for after any forme aforesaid, whereof the King shall have the one moiety of the same forfeiture and the party that will sue the other moiety; and if no man will sue then the King to have the whole. And this sute for the said penalty and forfeiture to be as well at the King's sute as any other, that will sue by information in any of the King's Courts



of Record, and such proceſſe to be had in the ſame as is uſed in other actions of debt at the common law in the ſame Courts. Provided alwaies that in the Courts of Chauncerie and Eſchequer they ſhall make ſuch proceſſe as hath been uſed afore time in informations afore them commenced, wherein the defendant ſhall not wage his law nor protection *ne effoine de ſervice le Roy* in the ſame allowable. And that the ſame Act and Ordinance made the ſaid third yere and all things therein contained, be from henceforth utterly void and of none effect, reſerving alway to the Spiritual Jurisdiction their lawful puniſhments in every cauſe of Uſury.

## No. XII.

*A Bill against Usury. 37 Henry VIII. c. ix.*

WHERE before this time divers and sundry Acts Statutes and Laws have been ordained had and made within this realm, for the avoiding and punishment of Usury, being a thing unlawful, and of other corrupt bargains shifts and chevizances (2) which Acts Statutes and Laws been so obscure and dark in sentences words and terms and upon the same so many doubts ambiguities and questions have arisen and grown and the same Acts Statutes and Laws been of so little force or effect, that by reason thereof little or no punishment hath ensued to the offenders of the same but rather hath encouraged them to use the same. (3) For reformation whereof be it enacted by the Lord our Sovereign Lord by the assent of the Lords Spiritual and Temporal and of the Commons in this present parliament assembled and by the authority of the same, that all and every the Acts Statutes and Laws heretofore made of for or concerning Usury shifts corrupt bargains and chevifances and every of them, and all pains forfeitures and penalties concerning the same and every part thereof shall from henceforth be utterly void and of none effect to all intents constructions and purposes.

II. And be it further enacted by the authority aforesaid, That no person or persons of what estate degree or condition soever he or they be, from and after the last day of January next coming shall by himself factor

I i 3

attorney

attorney servant or deputy sell his merchandises or wares to any person or persons and within three months next after by himself factor attorney deputy or by any other person or persons to his use and behoof buy the same merchandizes or wares or any part or parcel thereof upon a lower price, knowing them to be the same wares or merchandizes, that he before did so bargain and sell upon the pains and forfeitures hereafter limited in this statute.

III. And be it also enacted by the same authority, That no person or persons of what estate degree quality or condition soever he or they be at any time after the said last day of January next coming by way or mean of any corrupt bargain loan exchange chevifance shift interest of any wares merchandizes or other thing or things whatsoever, or by any other corrupt or deceitful way or means or by any covin engine or deceitful way or conveyance shall have receive accept or take in lucre or gains for the forbearing or giving day of payment of one whole year of and for his or their money or other things, that shall be due for the same wares merchandizes or other thing or things above the sum of ten pound in the hundred, and so after that rate and not above of and for a more or less sum or for a longer or shorter time, and no more or greater gain or sum thereupon to be had upon the pains and forfeitures hereafter in this Act mentioned and contained.

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the said last day of January do bargain and sell, or lay to mortgage by any way or mean any manors lands tenements or hereditaments to any person or persons upon condition of payment or non-payment of any sum or sums of money



ney to be had paid or made at any day certain, or before any such day by him, that shall so bargain sell or lay to mortgage the same manors lands tenements or hereditaments, that the same person or persons, to whom any such manors lands tenements or hereditaments shall be so bargained sold or laid to mortgage, shall not by reason thereof have ne take in lucre or gains of the issues revenues and profits of the same manors lands tenements or hereditaments above the sum of ten pounds in the hundred for one whole year, and so after the rate above said for a more or lesser sum or for a longer or shorter time and no more nor otherwise, upon pains forfeitures and penalties hereafter in this present estate limited and expressed.

V. And be it further enacted by the authority aforesaid, That if any person or persons, of what estate degree quality or condition soever he or they be, at any time after the said last day of January next coming shall do any act or acts thing or things contrary to the tenor form and effect of this estatute, or of any clause article or sentence contained in the same, that then all and every offender and offenders therein or in any part thereof shall forfeit and lose for every such offence the treble value of the wares merchandizes and other thing or things so bargained sold exchanged or shifted, (2) and the treble value of the issues and profits of the said manors lands tenements and hereditaments so had taken or received by reason of any such bargain sale or mortgage, (3) and also shall have and suffer imprisonment of his body and make fine and ransom at the King's will and pleasure; (4) the moiety of which forfeiture of the said treble value shall be to the King and the other moiety to him or them, that will sue for the same in any of the King's

Courts by action of debt bill plaint or information, in which action bill plaint or information no wager of law essoin or protection shall be admitted or allowed.

VI. Provided alway and be it enacted by the authority afore said, That this Act nor any thing therein contained shall not in any wise extend to any lawful obligation indorsed with a condition, nor to any statute or recognisance made and to be made for the payment of a lesser sum, so that the same obligation statute or recognisance be made for a true just and perfect debt, or for the performance of any other true covenants made or to be made upon a just and true intent had between the parties, other than in cases of Usury interest corrupt bargains shifts or chevifance, ne yet shall extend to any recovery fine feoffment release confirmation or grant made or to be made upon condition with a true intent, other than to such recoveries fines feoffments releases confirmations and grants, as shall be made upon conditions extending to Usury interest corrupt bargains shifts or chevifance, any thing in this statute contained, or any law statute or ordinance heretofore had used or made to the contrary notwithstanding.

## No. XIII.

*An Act against Usury. 5 and 6 Ed. VI. ch. xx.*

WHEREIN the seven and thirtieth year of the reigne of the late King of famous memorie King Henry the Eight father to our Sovereign Lord the King, that now is, amongst other Acts and Statutes then made it was enacted by the authority of parliament, that no person or persons at any time after the last day of January in the said seven and thirtieth year, should have, receive, accept or take in lucre or gaines for the loan, forbearing or giving day of payment of any sum of monie for one whole year above the sum of ten pound in the hundred, and so after that rate and not above, of and for a more or less sum or for a larger or shorter time, upon the paines and forfeitures in the said Act mentioned and contained. The which Act was not ment or intended for the maintenance and allowance of Usury as divers persons blinded with inordinate love of themselves have and yet do mistake the same, but rather was made and intended against all sorts and kinds of Usurie as a thing unlawful, as by the title and preamble of the said Act it doth plainly appear, and yet nevertheless the same was by the said Act permitted for the avoiding of a more evil and inconvenience, that before that time was used and exercised. But forasmuch as Usurie is by the word of God utterly prohibited as a vice most odious and detestable, as in divers places of the Holy Scriptures it is evident to be seen, which thing by no  
godly



godly teachings and persuasions can sink into the hearts of divers greedie uncharitable and covetous persons of this realme, nor yet by any terrible threatnings of God's wrath and vengeance, that justly hangeth over this realme for the great and open Usurie therein dayly used and practised, they will forsake such filthy gain and lucre, unless some temporal punishment be provided and ordeined in that behalf. For reformation whereof be it enacted by the authoritie of this present parliament, that from the first day of May, which shall be in the yeere of our Lordsh God 1552, the said Act and Statute concerning only Usury lucre or gaines of or for the lone, forbearing, or giving days of any sum or sums of money be utterly abrogated, void, and repealed.

And furthermore be it enacted by the authoritie aforesaid, That from and after the said first day of May next coming no person or persons of what estate, degree, quality or condition soever he or they be by any corrupt colorable or deceitful conveyance slight or engine, or by any way or mean shall lend give set out deliver or forbear any sum or summes of monie to any person or persons or to any corporation or body politicke to or for any manner of Usurie increase lucre gain or interest to be had received or hoped for over and above the sum or summes so lent, given, set out, delivered or forborne upon pain of forfeiture of the value, as well of the sum or sums so lent given set out delivered or forborne, as also of the Usurie, increase, lucre, gain, or interest thereof. And also upon pain of imprisonment of the body or bodies of every such offender or offenders, and also to make fine and ransom at the King's will and pleasure. The moietie of which  
forfeiture

APPENDIX. No. 13.

491

forfeiture of the said value shall be to the King, and the other moiety to the party, that will sue for the same in any of the King's Courts of Record by action of debt, bill, plaint, or information, wherein no wager of law, essoine or protection shall be allowed or admitted.

No. XIV.

## No. XIV.

*An Act against Usury. 13 Eliz. cap. viii.*

WHEREAS in the parliament holden the seven and thirtieth year of the reign of our late Sovereign Lord King Henry the Eighth of famous memory, there was then made and established one good Act for the reformation of Usury, by which Act the vice of Usury was well repressed, and specially the corrupt chevifance and bargaining by way of sale of wares, and shifts of interest. And where since that time by one other Act made in the fifth and sixth years of the reign of our late Sovereign Lord King Edward the Sixth, the said former Act was repealed, and new provisoes for repressing of Usury devised and enacted: which said later Act hath not done so much good as was hoped it should, but rather the said vice of Usury, and specially by way of sale of wares and shifts of interest, hath much more exceedingly abounded, to the utter undoing of many gentlemen, merchants, occupiers, and others, and to the importable hurt of the common-wealth, as well for that in the said later Act there is no provision against such corrupt shifts and sales of wares, as also for that there is no difference of pain, forfeiture or punishment, upon the greater or lesser exactions and oppressions by reason of lones upon Usury.

Be it therefore enacted, That the said later Statute made in the fifth and sixth years of the reign of King Edward the Sixth, and every branch and article of the same,



same, from and after the five and twentieth day of June next coming, shall be utterly abrogated, repealed and made void : and that the said late Act made in the said seven and thirtieth year of King Henry the Eighth, from and after the said five and twentieth day of June next coming shall be revived, and stand in full force, strength and effect.

And be it further enacted, That all bonds, contracts, and assurances collateral or other to be made for payment of any principal or money to be lent, or covenant to be performed upon or for any Usury in lending or doing of any thing against the said Act now revived, upon or by which lone or doing there shall be reserved or taken above the rate of x li. for the hundred for one year, shall be utterly void.

And be it further enacted, That all brokers, solicitors, and drivers of bargains for contracts or other doings against the said Statute now revived, whereupon shall be reserved or taken more than after the rate of ten pound for the lone of one hundred pound for a year, shall be to all intents and purposes judged, punished and used as Councillors, Attorneys or Advocates, in any case of *præmunire*.

And forasmuch as all Usury, being forbidden by the law of God, is sin and detestable : be it enacted, That all Usury, lone, and forbearing of money, or giving dayes for forbearing of money, by way of lone, chevi-  
fance, shifts, sale of wares, contracts, or other doings whatsoever for gain mentioned in the said Statute, which is now revived, whereupon is not reserved or taken, or covenanted to be reserved, payed, or given to the lender, contractor, shifter, forbearer, or deliverer, above the sum of ten pound for the lone or forbearing of a  
I hundred

hundred pound for one year, or after that rate for a more or lesser sum or time, shall be from the five and twentieth day or June next coming, punished in form following; that is to say, that every such offender against this branch of this present Statute, shall forfeit so much as shall be reserved by way of Usury, above the principal for any money so to be lent or forborn. All such forfeitures to be recovered and employed, as is limited for forfeitures by the said former Statutes now revived.

And be it further enacted, That Justices of Oyer and Determiner, and Justices of Assize in their circuits, Justices of Peace in their sessions, Mayors, Sheriffs, and Bayliffs of cities shall also have full power and authority to enquire, hear and determine of all and singular offences committed against the said Statute now revived.

And be it further enacted, That the said Statute now revived shall be most largely and strongly construed for the repressing of Usury and against all persons, that shall offend against the true meaning of the said Statute by any way or device directly or indirectly.

Provided alway, that this Statute doth not extend, nor shall be expounded to extend unto any allowances or payments for the finding of orphans, according to the antient rates or customs of the city of London, or any other city where like order is for the custody of orphans and their goods, as is in the said city of London.

Provided alwayes, and be it further enacted by the authority aforesaid, That if any person or persons, shall from and after the said five and twentieth day of June offend contrary to the said Statute revived by this present Act made in the seven and thirtieth year of the reign

reign of the said late King Henry the Eighth : that then all and every such offender and offenders shall and may also be punished and corrected according to the Ecclesiastical Lawes heretofore made against Usury. And that all and every person and persons offending in Usury, shifts, or chevifance against this present Act, and not taking or receiving but only after the rate of ten pounds in the hundred or under, for a year, shall be only punished by the pains and forfeitures provided and appointed by this Act, against such as shall not take or receive over and above the rate of x li. in the hundred for a year, and not otherwise. This Act to continue and endure for and during the space of five years next after the end of this present Parliament, and from thence unto the end of the first Session of the Parliament then next ensuing.

And be it further enacted by the authority aforesaid, That if this present Act shall not be continued in the first Session of the Parliament next ensuing the said term of five years, and then in the same session no other Statute or provision made against Usury or corrupt chevifance : that then all and every the Laws and Statutes repealed by this Act, shall remain and be of such like force and effect, as if this present Act had never been had, ne made.



N<sup>o</sup>. XV.

*An Act against Usury. 21 Jac. cap. xvii.*

WHEREAS at this time there is a very great abatement in the value of land and other the merchandizes, wares and commodities of this kingdom, both at home, and also in foreign parts, whither they are transported; and whereas divers subjects of this kingdom, as well the gentry as merchants, farmers and tradesmen, both for their urgent and necessary occasions for the following their trades, maintenance of their stocks and employments, have borrowed and do borrow divers sums of money, wares, merchandizes and other commodities; but by reason of the said general fall and abatement of the value of land, and the prices of the said merchandize, wares and commodities, and interest in loan continuing at so high a rate, as ten pounds in the hundred pounds for a year, doth not only make men unable to pay their debts, and continue the maintenance of trade, but their debts daily increasing, they are enforced to sell their lands and stocks at very low rates, to forsake the use of merchandize and trade, and to give over their leases and farms, and so become unprofitable members of the commonwealth, to the great hurt and hinderance of the same.

Be it therefore enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, That no person or persons whatsoever from and after the four and twentieth day of June, which shall be in the  
year

year of our Lord, one thousand six hundred twenty and five, upon any contract to be made after the said four and twentieth day of June, shall take directly or indirectly, for loan of any monies, wares, merchandize, or other commodities whatsoever, above the value of eight pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time : and that all bonds, contracts, and assurances whatsoever, made after the time aforesaid, for payment of any principal, or money to be lent, or covenanted to be performed, upon or for any Usury, whereupon, or whereby there shall be reserved, or taken, above the rate of eight pounds in the hundred as aforesaid, shall be utterly void : and that all and every person and persons whatsoever, which shall after the time aforesaid, upon any contract to be made after the said four and twentieth day of June, which shall be in the year of our Lord 1625, take, accept and receive, by way or means of any corrupt bargain, loan, exchange, chevifance, shift or interest of any wares, merchandize, or other thing or things whatsoever, or by any deceitful way or means, or by any covin, engine, or deceitful conveyance, for the forbearing, or giving day of payment for one whole year of and for their money, or other thing, above the summe of eight pounds for the forbearing of one hundred pounds for a year, and so after that rate for a lesser or greater summe, or for a longer or shorter time, shall forfeit and lose for every such offence the treble value of the monies, wares, merchandize, and other things so lent, bargained, sold, exchanged or shifted.

And be it further enacted by the authority aforesaid,  
That all and every scrivener and scriveners, broker and  
K k brokers,

brokers, solicitor and solicitors, driver and drivers of bargaines for contracts, who shall after the said twenty-fourth day of June, which shall be in the year of our Lord 1625, take or receive, directly or indirectly, any summe or summes of money, or other reward or thing for brocage, soliciting, driving, or procuring the loan, or forbearing of any sum or sums of money, over or above the rate or value of five shillings for the loan, or forbearing of one hundred pounds for a year, and so ratably, or above twelve pence for making or renewing of the bond or bill, for the loan or forbearing thereof, or for any counter-bond or bill concerning the same, shall forfeit for every such offence twenty pounds, and have imprisonment for half a year; the one moiety of all which forfeitures to be to the King our Sovereign Lord, his heirs and successors; and the other moiety to him or them that will sue for the same, in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint or information, in which no essoyn, wager of law, or protection to be allowed.

This Act to continue for the space of seven years, from the said four and twentieth day of June, which shall be in the year of our Lord 1625, and so to the end of the first Session of Parliament then next following.

Provided, that no words in this law contained, shall be construed or expounded to allow the practice of Usury, in point of religion or conscience.



N<sup>o</sup>. XVI.

*An Act for restraining the taking of excessive Usury.*  
12 Car. II. c. xiii.

FORASMUCH as the abatement of Interest from ten in the hundred in former times, hath been found by notable experience beneficial to the advancement of trade, and improvement of lands by good husbandry, with many other considerable advantages to this nation, especially the reducing of it to a nearer proportion with foreign States with whom we traffique. And whereas in fresh memory the like fall from eight to six in the hundred, by a late constant practice hath found the like successe to the general contentment of this nation, as is visible by several improvements. And whereas it is the endeavour of some at present to reduce it back again in practice to the allowance of the Statute, still in force, to eight in the hundred, to the great discouragement of ingenuity and industry in the husbandry, trade and commerce of this nation.

Be it for the reasons aforesaid, enacted by the King's most excellent Majesty, and the Lords and Commons in this present Parliament assembled, That no person or persons whatsoever, from and after the twenty-ninth day of September, in the year of our Lord, one thousand six hundred and sixty, upon any contract, shall from and after the said twenty-ninth of September, take directly or indirectly, for loan of any moneys, wares, merchandise, or other commodities whatsoever,

above the value of six pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time. And that all bonds, contracts, and assurances whatsoever, made after the time aforesaid, for payment of any principal or money to be lent or covenanted to be performed upon or for any Usury, whereupon or whereby there shall be reserved or taken above the rate of six pounds in the hundred, as aforesaid, shall be utterly void. And that all and every person or persons whatsoever, which shall after the time aforesaid, upon any contract to be made, after the said twenty-ninth day of September, take, accept and receive, by way or means of any corrupt bargain, loan, exchange, chevi-faunce, shift, or interest of any wares, merchandise, or other thing or things whatsoever, or by any deceitful way or means, or by any covin, engine, or deceitful conveyance for the forbearing or giving day of payment for one whole year, of and for their money, or other thing, above the sum of six pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter term, shall forfeit and lose for every such offence the treble value of the moneys, wares, merchandise, and other things so lent, bargained, sold, exchanged, or shifted.

And be it further enacted by the authority aforesaid, That all and every scrivener and scriveners, broker and brokers, solicitor and solicitors, driver and drivers of bargains for contracts, who shall after the said twenty-ninth day of September, take or receive directly or indirectly, any sum or sums of money, or other reward or thing, for brokage, soliciting, driving or procuring the  
loan,

loan, or forbearing of any sum or sums of money, over and above the rate or value of five shillings for the loan, or forbearing of one hundred pound for a year and so rateably, or above twelve pence for making or renewing of the bond or bill for loan, or for forbearing thereof, or for any counter-bond or bill concerning the same, shall forfeit for every such offence twenty pounds, and have imprisonment for half a year: the one moiety of all which forfeitures to be to the King our Sovereign Lord, his heirs and successors; and the other moiety to him or them that will sue for the same, in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint or information, in which no essoign, wager of law, or protection to be allowed.



N<sup>o</sup>. XVII.

*An Act to reduce the Rate of Interest, without any  
Prejudice to Parliamentary Securities.*

12 Ann. c. xvi.

WHEREAS the reducing of Interest to ten, and from thence to eight, and thence to six in the hundred, hath, from time to time, by experience been found very beneficial to the advancement of trade, and improvement of lands : and whereas the heavy burden of the late long and expensive war, hath been chiefly born by the owners of the land of this kingdom, by reason whereof they have been necessitated to contract very large debts, and thereby, and by the abatement in the value of their lands, are become greatly impoverished : and whereas by reason of the great Interest and Profit which hath been made of money at home, the foreign trade of this nation hath of late years been much neglected, and at this time there is a great abatement in the value of the merchandizes, wares, and commodities of this kingdom, both at home and in foreign parts, whither they are transported : and whereas for the redress of these mischiefs, and the preventing the encrease of the same, it is absolutely necessary to reduce the high rate of Interest of six pounds in the hundred pounds for a year to a nearer proportion with the Interest allowed for money in Foreign States ; be it therefore enacted by the Queen's most excellent Majesty, by  
and

and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That no person or persons whatsoever, from and after the said nine-and-twentieth day of September, in the year of our Lord, one thousand seven hundred and fourteen, upon any contract, which shall be made from and after the said nine-and-twentieth day of September, take, directly or indirectly, for loan of any monies, wares, merchandize, or other commodities whatsoever, above the value of five pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all bonds, contracts, and assurances whatsoever, made after the time aforesaid, for payment of any principal, or money to be lent or covenanted to be performed upon or for any Usury, whereupon or whereby there shall be reserved or taken above the rate of five pounds in the hundred, as aforesaid, shall be utterly void; and that all and every person or persons whatsoever, which shall after the time aforesaid, upon any contract to be made after the said nine-and-twentieth day of September, take, accept and receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any wares, merchandize, or other thing or things whatsoever, or by any deceitful way or means, or by any covin, engine, or deceitful conveyance, for the forbearing or giving day of payment for one whole year, of and for their money or other thing, above the sum of five pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter term, shall forfeit and lose for every such of-

fence the treble value of the monies, wares, merchandizes, and other things, so lent, bargained, exchanged, or shifted.

II. And be it further enacted by the authority aforesaid, That all and every scrivener and scriveners, broker and brokers, solicitor and solicitors, driver and drivers of bargains for contracts, who shall, after the said nine-and-twentieth day of September, take or receive, directly or indirectly, any sum or sums of money, or other reward or thing for brokage, soliciting, driving, or procuring the loan, or forbearing of any sum or sums of money, over and above the rate or value of five shillings for the loan, or forbearing of one hundred pounds for a year, and so ratably, or above twelve pence, over and above the stamp-duties, for making or renewing of the bond or bill for loan, or forbearing thereof, or for any counter-bond or bill concerning the same, shall forfeit for every such offence twenty pounds, with costs of suit, and suffer imprisonment for half a year; the one moiety of all which forfeitures to be to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to him or them that will sue for the same in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint or information, in which no essoign, wager of law, or protection, shall be allowed.



## No. XVIII,

*Thirty-ninth Section of an Act passed 3 Geo. I. c. viii.  
for redeeming several Funds of the Governor and  
Company of the Bank of England and for other  
Purposes, &c.*

AND it is hereby enacted, That the said Governor and Company of the Bank of England or their successors shall have power and authority, and they are hereby enabled, in case they shall think fit from time to time and at any time or times at their own good-liking to borrow or take up money upon any contracts bills bonds or obligations under their common seal or upon credit of their capital stock or stocks or any part thereof or otherwise for any time or to be paid upon demand and at such rate or rates of Interest or upon such terms as they shall think fit although the same shall happen to exceed the Interest allowed by Law to be taken and to give such security for the same, as shall be to the satisfaction of the lenders respectively; any former law statute prohibition restriction clause matter or thing whatsoever to the contrary notwithstanding. And they are hereby authorised at their own good-liking to contract and agree in such manner, as they shall think fit at any time or times with any person or persons, natives or foreigners, bodies politic or corporate, in whose abilities they shall be well satisfied, for or concerning the furnishing of monies from time to time by such persons or corporations, upon such terms as they shall find

find necessary for the better enabling the said Governor and Company of the Bank of England to perform such matters and things as they are to do and perform in pursuance of this Act, and to take subscriptions from such persons or corporations for that purpose ; and it is hereby declared that such contracts bills bonds obligations securities or subscriptions shall not be chargeable with any the duties upon stampd vellum, parchment or paper ; any former Law or Statute to the contrary notwithstanding.

## No. XIX.

14 GEO. III. c. 79.

*An Act for explaining an Act made in the twelfth Year of the Reign of Queen Anne intituled An Act to reduce the Rate of Interest without any Prejudice to Parliamentary Securities.*

“ WHEREAS large sums of money have been and  
“ may be lent by his Majesty’s subjects in Great Britain  
“ upon mortgages, or other securities on estates in the  
“ kingdom of Ireland and also in his Majesty’s colonies  
“ or plantations in the West Indies ; which loans have  
“ been found to contribute greatly to the improvement  
“ of the said kingdom colonies and plantations. And  
“ whereas it has frequently been found convenient to  
“ execute such mortgages or securities and the trans-  
“ fers or assignments thereof in Great Britain : and  
“ whereas doubts have arisen whether such loans and  
“ the mortgages or securities for the same, and the  
“ transfers or assignments thereof when made and exe-  
“ cuted in Great Britain are as valid and effectual, as  
“ when made and executed in the said kingdom of Ire-  
“ land, colonies plantations or dominions; and by rea-  
“ son of an Act passed in the twelfth year of the reign  
“ of her late Majesty Queen Anne, intituled, An Act  
“ to reduce the rate of Interest without any prejudice  
“ to parliamentary securities, whether such mortgages  
“ or securities are valid and effectual where the rate of  
“ Interest thereby reserved or made payable is more  
“ than five pounds per centum, though such Interest  
“ does



“ does not exceed the rate of Interest allowed and esta-  
“ blished by the Law of the kingdom of Ireland, colony  
“ plantation country or place in which the estates com-  
“ prized in such mortgages or securities respectively  
“ are; and whether his Majesty’s subjects in Great  
“ Britain have not or may not become subject or liable  
“ to penalties or forfeitures by receiving or taking In-  
“ terest for the sums of money really and *bonâ fide* ad-  
“ vanced or lent on such mortgages or securities at the  
“ rate of Interest allowed and established by the Law of  
“ the kingdom, colony, plantation, country or place  
“ wherein the mortgaged estates respectively lie :” for  
obviating such doubts, be it enacted by the King’s most  
excellent Majesty by and with the advice and consent of  
the Lords Spiritual and Temporal, and Commons in  
this present Parliament assembled, and by the authority  
of the same, That all mortgages and securities, which  
by any of his Majesty’s subjects, already have been  
made and executed in Great Britain of or concerning  
any lands tenements hereditaments, slaves cattle or  
other things lying and being in the kingdom of Ireland  
or in any of the said colonies plantations or dominions  
or any estate or Interest therein to any of his Majesty’s  
subjects for securing the repayment of the sums of  
money thereon respectively really and *bonâ fide* ad-  
vanced and lent with Interest for the same, and all  
bonds, covenants and securities for payment of the  
same sums of money and Interest respectively and all  
transfers or assignments which have been made and  
executed in Great Britain of such mortgages securities  
or bonds, to any of his Majesty’s subjects; shall be as  
good valid and effectual, to all intents and purposes  
whatsoever, as such mortgages, securities, bonds, cove-  
nants,

nants, transfers, or assignments would have been if the same had been made and executed in the kingdom island plantation country or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprized in any such mortgage security transfer or assignment as aforesaid, severally lie or are; and that none of his Majesty's subjects in Great Britain shall be subject or liable to any of the penalties or forfeitures in the said Act, made in the twelfth year of her said late Majesty's reign by receiving or taking Interest for the sum or sums of money really and *bonâ fide* advanced or lent on any such mortgage security bond covenant transfer or assignment as aforesaid at the rate of Interest allowed and established by the Law of the kingdom, colony, plantation, country or place wherein the mortgaged premises respectively lie or are.

II. And be it further enacted by the authority aforesaid, That all mortgages and securities which by any of his Majesty's subjects, after the passing of this Act, shall be made and executed in Great Britain of or concerning any lands tenements hereditaments slaves cattle or other things lying and being in the kingdom of Ireland, or in any of the said colonies plantations or dominions or any estate or interest therein to any of his Majesty's subjects, for securing the re-payment of the sums of money thereon respectively to be really and *bonâ fide* advanced and lent with Interest for the same and all bonds covenants and securities, for payment of the same sums of money, and Interest respectively and all transfers or assignments which after the passing of this Act shall be made and executed in Great Britain of such mortgages securities or bonds to any of his Majesty's subjects shall be as good valid and effectual to all intents and

and purposes whatsoever as such mortgages securities bonds covenants transfers and assignments would be if the same were made and executed in the kingdom island plantation country or place where the lands tenements hereditaments slaves cattle or other things to be mentioned or comprized in any such mortgage security transfer or assignment as aforesaid, severally lie or are, and that none of his Majesty's subjects in Great Britain shall be subject or liable to any of the penalties or forfeitures in the said Act made in the twelfth year of her said late Majesty's reign by receiving or taking Interest for the sum or sums of money to be really and *bonâ fide* advanced or lent on any such mortgage, security, bond, covenant, transfer or assignment as aforesaid so as the Interest so to be received or taken do not exceed the rate of six pounds for one hundred pounds for a year, the aforesaid Act of Parliament or any other Law or Statute to the contrary notwithstanding.

III. Provided always and it is hereby declared, That this Act shall not make good, valid or effectual any such mortgage, security, bond, covenant, transfer or assignment where the lender or lenders of any sum or sums of money has or have knowingly advanced or lent or shall knowingly advance or lend thereon more money than the lands, tenements, hereditaments, slaves, cattle or other things in such mortgages securities transfers or assignments mentioned or comprized or to be mentioned or comprized, was, were or shall be at the time or times of advancing or lending such sum or sums of money as aforesaid, really and *bonâ fide* worth, to be sold.

IV. And be it enacted by the authority aforesaid, That all and every person or persons borrowing any  
sum



sum or sums of money under the authority of this Act upon any such lands tenements hereditaments slaves cattle or other things exceeding the value, which the same shall be at the time of borrowing such sum or sums of money really and *bonâ fide* worth to be sold over and above all incumbrances, which shall then affect the same shall forfeit treble the value of the sum borrowed; the one half to be paid to the informer the other half to the Treasurer of the Royal Hospital for seamen at Greenwich in the county of Kent or to his sufficient deputy or agent for the use of the said hospital.

V. Provided also, and be it enacted, That all such mortgages or other securities granted under the authority of this Act, by which such lands, tenements, hereditaments, slaves, cattle, or other things are intended to be charged or affected shall be registered within the kingdom island colony plantation country or place where the said lands tenements hereditaments slaves cattle or other things severally lie or are within the time limited by the laws of such kingdom, island, colony, plantation, country or place otherwise the same shall be subject to the several provisions and penalties contained in the said Act, made in the twelfth year of her late Majesty Queen Anne in such manner as the same would have been if this Act had never been passed, unless the mortgagee or other person or persons, for whose behoof such mortgage or other security shall have been made or granted shall have *bonâ fide* used his or their utmost endeavour to cause the same to be registered within the time herein before limited for that purpose.

## No. XX.

*The Draught of the Bill which Mr. Solicitor General brought into the House of Commons on the 26th of February 1777, to restrain the raising of Money by Sale of Annuities for the Life of the Grantor.*

WHEREAS the practice of raising money by the sale of Annuities hath of late years greatly increased whereby not only many persons having anticipated their income are reduced to early ruin but the fair loan of money at moderate Interest to persons engaged in the various pursuits of useful industry is and must be greatly obstructed.

SECT. 1. Be it therefore enacted by the King's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same, That a memorial of every deed bond instrument or other assurance whereby any Annuity or Rent Charge shall (12) be granted for one or more life or lives or for any term of years determinable on one or more life or lives shall within                      days of the execution of such deed bond instrument or other assurance be inrolled in the High Court of Chancery, and that every such memorial shall contain the day of the month and the year when the deed bond instrument or other assurance bears date and the name and addition  
of

of all the parties and for whom any of them are trustees and of all the witnesses and the place of their abode, and shall set forth the annual sum or sums to be paid and the name and addition of the person or persons, for whose life or lives the Annuity is granted, and the consideration or considerations of granting the same, otherwise every such deed bond instrument or other assurance (11) shall be to all intents and purposes.

SECT. 2. And be it further enacted by the authority aforesaid, That no judgment shall be entered of record upon any warrant of attorney to confess judgment *on any such bond as aforesaid*, (14) nor any *action brought* or execution sued out or any such judgment already entered, *nor shall any action be hereafter brought* (1) on any such deed bond instrument or other assurance *as aforesaid* (2) without a certificate of the proper officer verified by affidavit of the due enrollment of a memorial of such deed bond instrument or other assurance sworn before a Judge of the Court, where such judgment is entered or action brought and filed with the proper officer of that Court (6).

SECT. 3. *And be it further enacted by the authority aforesaid, That all judgments entered upon any such bond deed instrument or assurance within the same term or within two succeeding terms of each other shall be ranked and have priority of payment according to the date of the respective enrollments of such bonds deeds instruments or other assurances* (12).

SECT. 4. And be it further enacted by the authority aforesaid, That in every deed instrument or other assurance, whereby any Annuity or Rent Charge shall (14) be granted or attempted to be granted the consi-



deration really and *bonâ fide* paid, and in case the same or any part thereof shall consist in goods or any other thing than money, the nature quantity and value of such thing or things and also the name or names of the person or persons, by whom or (4) on whose behalf the said consideration or any part thereof shall be advanced shall be fully distinctly and truly set forth and described in words at length and in case all the circumstances aforesaid shall not be fully distinctly and truly set forth and described every such deed instrument or other assurance shall be to all intents and purposes (9).

SECT. 5. And be it further enacted, That a particular roll shall be provided and kept by the Clerks of the Inrollments in Chancery or their deputy, on which such memorials shall be entered, and that every such memorial shall be duly inrolled in order of time, as the same shall be brought to the Office and the said Clerks of *Inrollments* (14) shall specify upon the roll the certain day hour and time, on which such memorial is brought to the Office, and shall grant a certificate of the inrollment thereof when required, and that there shall be paid for the inrollment of every such (3) memorial the sum of (4) and no more in case the same do not exceed (5) words but if such memorial shall exceed (6) words than after the rate and proportion of (7) for every words and the like fees for every (8) certificate and copy given and the fee of (9) for every search in the Office and no more.

SECT. 6. *And be it further enacted, That every Annuity or Rent Charge for the life of the grantor or for any joint lives, of which the grantor shall be one, or for any term of years determinable on the life of the grantor, or on joint lives, of which the grantor shall be one shall be deemed and ad-*

judged to be without any special agreement for that purpose redeemable, and that all Courts of Equity may decree the same to be redeemed upon a bill filed by the grantor his creditors or assignees upon such terms as shall be just, and in case before filing the bill a tender shall have been made by the plaintiff of the sum really due he shall be intitled to the costs of suit (6).

Se<sup>c</sup>t. 7. And be it further enacted by the authority aforesaid, That

and if any person shall (9) procure (10) solicit or engage any person being under the age of years to grant or attempt to grant any Annuity or Rent Charge, or to execute any bond deed or other instrument for securing the same, or shall advance or procure or treat for (14) any money to be advanced to any person under the age of years upon consideration of any Annuity or Rent Charge to be secured or granted by such infant after he shall have attained (17) his full age of years, or shall induce solicit or procure any infant upon any treaty or transaction for money advanced or to be (2) advanced to make oath before any Judge Justice or other Magistrate, (3) that he will not plead infancy or make any other defence against the demand of any such Annuity or Rent Charge or the re-payment of the money advanced to him when under age, (6) every such person shall be liable to pay for every such offence the sum of to any person who will sue for the same in any of his Majesty's Courts of Record at Westminster by action of debt bill plaint or information, in which no protection essoin wager of law or more than one imparlance shall be allowed (10).

Sect. 8. And be it further enacted, That nothing in this Act contained shall extend to any Annuity or Rent Charge given by will or by marriage-settlement or for the advancement of a child, nor to any Annuity or *Rent Charge secured upon lands of equal or greater annual value whereof the grantor was seized in fee-simple or in fee-tail in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds the dividends whereof are of equal or greater annual value than the said Annuity, nor to any Annuity or Rent Charge granted by any body corporate or under any authority or trust created by Act of Parliament, nor to any Annuity where the sum to be (14) paid does not exceed annually unless there be more than one such last-mentioned Annuity from the same grantor or grantors to or in trust for the same person or persons.*



## CLAUSE (A).

*That before any Judgment shall be entered of Record for securing any Annuity already granted and before any Action shall be brought on any such Judgment already entered or on any Deed already executed for that purpose a Memorial of such Deed shall be inrolled in the Court of Chancery.*

AND be it further enacted, That before any judgment shall be entered of record upon any warrant of attorney to confess judgment for recovering or securing the payment of any Annuity or Rent Charge, that hath already been granted for one or more life or lives or for any term of years determinable upon one or more life or lives, and before any execution shall be sued out or action brought on any such judgment already entered, or on any deed bond instrument or other assurance already executed for the purposes aforesaid, a memorial of the deed bond instrument or other assurance shall be inrolled in the High Court of Chancery, and that every such memorial shall contain the day of the month and the year, when the deed bond instrument or other assurance bears date, and the name and addition of all the parties and the names of all the witnesses, and shall set forth the annual sum or sums to be paid, and the name and addition of the person or persons, for whose life or lives the Annuity is granted, and the consideration or considerations of granting the same.

## CLAUSE (B).

*For ascertaining the Consideration for which an Annuity is granted.*

AND be it further enacted, That if any part of the consideration shall be returned to the person advancing the same, or in case the consideration or any part of it is advanced in notes, if any of the notes are not paid when due, or shall with the privity of the person advancing the same be cancelled or destroyed without being first paid, or in case the consideration or any part of it is advanced in goods, if the goods are not of the value set upon them, or if any part of the consideration is retained on pretence of answering the future payments of the Annuity, or any other pretence, in all and every of the aforesaid cases it shall and may be lawful for the person, by whom the Annuity or Rent Charge is made payable to apply to the Court, in which any action is brought for payment of the Annuity or judgment entered by motion to stay proceedings on the judgment or action, and it shall and may be lawful for the Court at their discretion to make any rule or order requiring satisfaction on the oath of the party or parties complained against by examination of him or them in open Court, or by commission under the seal of the Court for the examination of him or them, or by affidavit as the Court shall find most proper for the discovery of such practices, and upon the refusal of the party or parties to make such discovery or satisfaction as aforesaid, or in  
case

case it shall appear to the Court, that he or they have used such practices as aforesaid or any of them, it shall and may be lawful for the Court to order the deed bond instrument or other assurance to be cancelled and the judgment, if any has been entered, to be vacated.

---

C L A U S E (C).

*For ascertaining the true Value of any such Annuity at the Time of granting it and for annulling the Security upon Payment of what is really due.*

AND be it further enacted, That if any suit or action shall be brought in any Court of Law or Equity, or if judgment shall be entered of record upon any warrant of attorney to confess judgment, or if execution shall be sued out or any action brought on any such judgment already entered or upon any deed bond instrument or other such assurance for securing the payment of any such Annuity or Rent Charge as aforesaid, it shall and may be lawful to and for the Court, wherein such suit or action shall be depending, at the instance of any of the parties to such suit or action to examine and inquire into the just and true value of any such Annuity or Rent Charge (now subsisting or which shall hereafter be granted or created) at the time of granting the same, and also what consideration was at such time really and *bond fide* paid or given by the grantee or



grantees to the grantor or grantors for the same by affidavits in open Court, or to refer such examinations and enquiry to the proper officer of the Court, or else to direct an issue or issues to be tried by a Jury to ascertain the same, as the nature of the case may require, and if it shall appear, from the verdict of such Jury on the report of such officer or upon the examination of the matter by affidavit, and it shall be declared decreed or adjudged by the Court, that the purchase of such Annuity or Rent Charge was so unfair, that the same ought to be set aside, then the grant of such Annuity or Rent Charge and all deeds bonds instruments or other assurances for securing the payment thereof shall cease and become void upon payment by the grantor or grantors of such Annuity or Rent Charge of the sum, if any, which the Court shall adjudge to be really due to the grantee or grantees.

---

### CLAUSE (D).

*For limiting the Price of Brokerage on Money advanced for any Annuity.*

AND be it enacted by the authority aforesaid, That all and every solicitors and solicitor scriveners and scrivener brokers and broker and other persons or person, who from and after the passing this Act shall ask demand accept or receive directly or indirectly any sum or sums of money or any other kind gratuity or

reward for the soliciting or procuring the loan and for the brokerage of any money, that shall be actually and *bonâ fide* advanced and paid as and for the price or consideration of any such Annuity or Rent Charge over and above the sum of 10s. for every one hundred pounds so actually and *bonâ fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor, and being lawfully corrected of such offence in any Court of Assize Oyer and Terminer or General Gaol Delivery shall and may for every such offence be punished by fine and imprisonment or one of them at the discretion of the Court, and that the person or persons who shall have paid or given any sum or sums of money gratuity or reward shall be deemed a competent witness or witnesses to prove the same.

---

*Amendments to the Annuity Bill made in the Commons.*

- Fo. 1. 1. 12. After (shall) insert (from and after the passing of this Act).  
         614. Bl. (twenty).  
 2. 11. Bl. (null and void).  
     14. Leave out (on any such bonds as afore-  
         said) and insert (for recovering or  
         securing the payment of any An-  
         nuity or Rent Charge that now is  
         or hereafter shall be granted for life  
         or lives or for any term of years de-  
         terminable on one or more life or  
         lives).

Fo. 2.

Fo. 2. l. 15. Leave out (action brought or) and after (out) insert (or action brought).

3. 1. Leave out from (entered) to (on) and insert (or).

3. 2. Leave out (such) and leave out (as aforesaid) and insert (whereby any such Annuity or Rent Charge now is or hereafter shall be granted).

6. Leave out from (court) to (and) in line 12.

14. After (shall) insert (from and after the passing of this Act).

4. 4. Leave out (or) and insert (and).

9. Bl. (null and void).

14. Leave out (inrollment) and insert (the inrollments or his deputy).

5. 3. Bl. (one shilling).

4. Bl. (two hundred).

5. Bl. (two hundred).

6. Bl. (sixpence).

7. Bl. (one hundred).

8. Bl. (one shilling).

9. Leave out from (more) to (and) in fo. 6. l. 6.

6. 9. After (irredeemable) insert (or whereby the redemption thereof may be clogged with any condition) and bl. (*null and void*) and after the 2<sup>o</sup> (*shall*) insert (either in person by letter agent or otherwise howsoever).

10. After (procure) insert (engage) and leave out (or engage) and insert (or ask).



- Fo. 6. l. 11. Bl. (twenty-one).  
 14. Bl. (twenty-one).  
 17. Bl. (twenty-one).  
 7. 2. Leave out from (oath) to that in l. 3.  
 and insert (or to give his word of  
 honor or solemn promise).  
 6. After (age) insert (or that when he  
 comes of age he will confirm or ra-  
 tify or in any ways substantiate such  
 Annuity or Rent Charge) and leave  
 out from (be) to the end of l. 10.  
 and insert (guilty of a misdemeanor  
 and being thereof lawfully convict-  
 ed in any Court of Assize Oyer and  
 Terminer or General Gaol Delivery  
 shall and may be punished for the  
 said offence by fine imprisonment or  
 other corporal punishment as the  
 Court shall think fit to award). (D).  
 14. Bl. (ten pounds).
- 

*The Amendments made in the Bill by the Lords,  
 with which it was sent down to the Commons.*

- Pr. 2. l. 8 & 9. Leave out "null and void to all in-  
 "tents and purposes" and insert  
 "deemed or taken to be a secu-  
 "rity only for the money really  
 "advanced with interest."

Pr. 3.

Pr. 3. l. 31. After "paid" leave out "and in case  
 " the same or any part thereof shall  
 " consist in goods or any other thing  
 " than money the nature quantity  
 " and value of such thing or things"  
 and insert "which shall be in money  
 " only."

Pr. 4. l. 7. After "be" leave out "null and void  
 " to all intents and purposes" and in-  
 sert "deemed or taken to be a secu-  
 " rity only for the money really ad-  
 " vanced with interest."

l. 18. After "paid" leave out "or in case the  
 " consideration or any part of it is ad-  
 " vanced in goods, if the goods are  
 " not of the value set upon them."

l. 33. After "action" leave out "and it shall  
 " and may be lawful for the Court at  
 " their discretion to make any rule or  
 " order requiring satisfaction on the  
 " oath of the party or parties com-  
 " plained against, by examination of  
 " him or them in open Court, or by  
 " commission under the seal of the  
 " Court for the examination of him  
 " or them, or by affidavit as the Court  
 " shall find most proper for the dis-  
 " covery of such practices; and upon  
 " the refusal of the party or parties to  
 " make such discovery or satisfaction  
 " as aforesaid."

Pr. 5. l. 14. After "vacated" insert "upon payment  
 " of

“ of such money as was advanced with  
“ interest.”

Pr. 6. l. 17. After “ enquired ” leave out “ into the  
“ just and true value of any ” and in-  
sert “ in a summary way whether.”

l. 18. After “ created ” leave out “ at the time  
“ of granting the same, and also what  
“ consideration was at such time really  
“ and *bonâ fide* paid or given by the  
“ grantee or grantees to the grantor  
“ or grantors for the same ” and in-  
sert “ was obtained by fraud or other  
“ undue means or whether the grantor  
“ is entitled to redeem the same.”

l. 33. After “ if ” leave out “ it shall appear  
“ from the verdict of such Jury or  
“ the report of such officer, or upon  
“ the examination of the matter by  
“ affidavit, and it shall be declared,  
“ decreed, or adjudged by the Court,  
“ that the purchase of such Annuity  
“ or Rent Charge was so unfair, that  
“ the same ought to be set aside ” and  
insert “ the Court shall adjudge that  
“ the same was fraudulently obtained,  
“ or that the grantor is entitled to  
“ redeem.”

Pr. 7. l. 10. After “ grantees ” insert clause “ A ”  
(Clause A). “ And be it further en-  
“ acted by the authority aforesaid,  
“ That the Court may, in every such  
“ case as aforesaid, award to either  
“ party such costs as to them shall  
“ seem just.”

Pr. 9.



Pr. 9. l. 13. After "Annuity" insert "nor to any voluntary Annuity granted without regard to pecuniary consideration."

Ordered that such a number of copies of the said Bill, with the Amendments, be printed, as shall be sufficient for the use of the Members of the House.

## No. XXI.

## A B I L L

*To Regulate Annuities for Lives presented to the House of Commons by Mr. Bacon 13th May 1777 which only went to the second Reading.*

WHEREAS the raising of money by the sale of Life Annuities hath a tendency to evade the provisions of the Statutes made against Usury, it being generally understood, that the sum advanced as the purchase-money may be repaid and the annual payments being so large in proportion to the sum advanced as to afford after deducting an adequate price for the insurance an exorbitant interest: And whereas by such dealings not only many persons are reduced to ruin, but the fair loan of money at the interest allowed by Law to persons engaged in the various pursuits of useful industry is greatly obstructed:

Sect. 1. Be it enacted by the King's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same, That if upon any contract for the purchase of any Annuity or Rent Charge for the life of the grantor, or for lives of which the grantor shall be one, or for any term of years or greater estate determinable on the life of the grantor, or on lives of which the grantor shall be one shall be made after the

the sum to be paid in each year  
shall

SECT. 2. And be it further enacted, That it shall and may be lawful to reserve and take as a consideration for the risk of the life of any person being above the age of \_\_\_\_\_ years and under \_\_\_\_\_ the sum of \_\_\_\_\_

and no more in each year for every hundred pounds of  
the money advanced and for the risk of the life of any  
person being above the age of                      years and  
under the age of                      and no more in each  
year for every hundred pounds advanced, and for the  
risk of the life of any person being above the age of  
                    years and under                      the sum  
of                      and no more in each year for every  
hundred pounds advanced, and for the risk of the life of  
any person being above the age of                      years  
and under                      the sum of                      and  
no more in each year for every hundred pounds ad-  
vanced, and for the risk of the life of any person being  
above the age of                      years and under  
the sum of                      and no more in each year for  
every hundred pounds advanced, and for the risk of the  
life



life of any person being above the age of  
years and under the sum of  
and no more in each year for every hundred pounds  
advanced.

Sect. 3. Provided always, and be it further enacted,  
That nothing herein before contained shall extend or  
be taken to extend to the grant of any Annuity upon  
the single life of any person in his Majesty's sea or land-  
service or who at the time of granting the same shall  
be about to go to any part of Asia Africa or his Ma-  
jesty's West Indian islands and shall actually depart for  
the same within from the time of the grant.

Sect. 4. And be it further enacted, That every An-  
nuity for the life of the grantor or for lives, of which  
the grantor shall be one or for any term of years or  
greater estate determinable on the life of the grantor  
or on lives, of which the grantor shall be one already  
granted or hereafter to be granted shall and may be  
redeemable by the grantor giving months  
notice on payment of the sum actually and *bonâ fide*  
advanced as the consideration of granting the same  
with all arrears of the Annuity incurred due at the day  
of payment of the principal sum.

Sect. 5. And be it further enacted, That it shall  
and may be lawful for any person charged with the  
payment of such Annuities to file a bill for redemp-  
tion or to apply by motion to any Court, in which  
judgment shall be entered or an action brought for re-  
covery of the Annuity in like manner as is provided in  
the case of money due upon mortgage by an Act of  
the seventh year of King George the Second intituled  
"An Act for the more easy Redemption and Fore-  
closure of Mortgages."

M m

The

*The Report of the Committee to whom it was referred to take into consideration the Laws against Usury and the present Practice of purchasing Annuities for the Life of the Grantor.*

MR. BACON reported from the Committee, who were appointed to take into consideration the Laws now in being against Usury and the present practice of purchasing Annuities for the life of the grantor and to report their opinion thereupon to the House, That the Committee had considered the same accordingly, and had come to several resolutions; which they had directed him to report to the House, and he read the report in his place; and afterwards delivered it in at the clerk's table. Where the same was read; and is as followeth, viz.

YOUR Committee, in prosecution of the first object of their inquiry, have perused the Statutes made against Usury; and they observe that the advantage to be made by the loan of money hath at different periods been restrained to a certain sum, which they conceive to have been somewhat above the rate, at which the use of money might be procured at the æras when these Acts passed. The Act 12 Anne, Statute 2. cap. 16. has fixed five per centum per annum as the lawful value of the use of money upon loan; and all contracts and securities, upon which more is taken than after the aforesaid rate are not only made totally void, but the persons receiving the same are subject to forfeit treble the money lent.

They

They proceeded to enquire into the present practice of purchasing Annuities for the life of the grantor; and they propose to lay before the House the result of their enquiry in the following method:

First, to state the present mode of transacting this business and at what price such Annuities are purchased.

Secondly, the real value of Annuities, as far as the same can be reduced to calculation.

The Committee must observe, that the information they have received upon the first head has been taken in the most general terms, as they thought it their duty to avoid any examination, which might afford discovery of particular transactions, and disclose the affairs of individuals to the public view; but they believe, that the result of the enquiry will not be the less certain from the reserve they have maintained.

Mr. Richard Brown of Golden Square, who hath been conversant in the purchase of Annuities for the life of the grantor for about twelve years informed your Committee, That some years ago he has known eight years' purchase given for an Annuity for the life of the grantor; that six years' purchase is the current price; and that it may be said to be a market-price at present of an Annuity upon the life of a person of any age from twenty-one to fifty, both inclusive.

Robert Taylor, esq. who hath been acquainted with these transactions by having settled Annuities on behalf of the grantors said, That he took six years' purchase to be the current price;—this Gentleman together with Elbro. Woodcock and John Clementson, esqrs. informed your Committee, That they had severally been concerned in paying off Annuities to a

M m 2

very



very large amount ; and that those Annuities had been sold as appeared to them by the bonds at six years' purchase.—Mr. Taylor knew some Annuities were sold at a lower rate, and he only knew one instance where more was given ; that was upon a real security and the price was seven years' purchase.

Mr. Brown said, That where the person is of great property and the security on that account reckoned good seven years' purchase has been given, and he added eight years' purchase if there was land security. No instance however was mentioned, where so much as eight years' purchase had been given, and the instances of seven years' purchase do not appear to have been very frequent of late ;—two were mentioned to the Committee in addition to that stated by Mr. Taylor ; in both, the Annuities were effectually secured on a real estate and paid by a receiver ; the life in the one case was thirty-five, in the other forty-five. And it appeared by Mr. Clementson's information, that upon security equally clear and a younger life no more than six years' purchase had been given.

Mr. Brown likewise informed your Committee, That though he had not transacted any Annuities at a lower rate than six years' purchase, yet he was sure many had been sold at four and three years' purchase.

The security that usually has been taken is a bond and judgment from the grantor and sometimes another person is joined with him in the security.

The charge upon the transaction of the Annuities, which the seller pays amounts by Mr. Brown's account to five per cent. upon the price including the expence of all the deeds except the judgment, for which 5*l.* are paid besides : and Mr. Taylor added, that he believed  
such

such had been the usual deductions in the Annuities transacted by Mr. Brown ; but that there had been great abuses in this respect by other persons.

Your Committee were further informed, That it was generally understood upon the sale of such Annuities, though not so expressed in the deeds, that they might be redeemed on the payment of the principal sum, with the arrears of the Annuity to the time of payment, and a farther consideration which usually was half a year's Annuity ; upon the Annuities which Mr. Woodcock had settled on behalf of the grantors the half-year's Annuity had been exacted ; and in one case the Annuity was purchased in February paid off in the July following, and the half-year's payment beyond the current Annuity demanded and taken ;—Mr. Brown said the half-year's Annuity had of late been given up in the settlement of Annuities to a considerable amount ;—Mr. Clementson said he had found some difficulty to get the Annuitants to agree to a redemption on payment of the principal sum ; but after a bill was brought into Parliament for restraining the sale of Life Annuities many came and offered to take their principal ;—and all he redeemed were without payment of the half-year's Annuity.

Upon the second head the real value of Annuities, the Committee hath entered into a more minute examination, and the evidence they have taken has been directed,

First, to discover the exact value of an Annuity for a given life by calculation.

Secondly, to ascertain the value by the rate, at which Lives are actually insured, and at which Life Interests are estimated in the purchase of estates.

M m 3

Thirdly,

Thirdly, to shew the price that Annuities bore before the practice of selling them was so frequent as it hath been of late years.

The Committee received great assistance upon the first head from Mr. Mavor, who hath formed Tables shewing the present value of Annuities from 1000l. to 1l. on a single life allowing compound interest at the different rates of 5, 4 and 3 per cent. from the age of 12 to 77, both inclusive.

The probable duration of life, upon which his calculations of the value of Annuities is formed, is not taken upon so high an estimate as that of Demoiivre's, whose Tables approach nearly to the Tables of Life formed on the bills of mortality at Northampton, nor upon so low an estimate as those of Mr. Simpson, who formed his on the bills of mortality in London.

Mr. Mavor has calculated his Tables for London on the bills of mortality there, but he remarks that they are decreased since the date of Mr. Simpson's Tables; and the decrease to be owing not to a diminution of the inhabitants, but to the place being more healthy; for which he observes, there are many visible reasons—and the number of christenings is upon the increase particularly for the last ten years.

Mr. Mavor has calculated upon his Tables the value of Annuities on a single life from the age of twenty-one to the age of fifty, taking the medium of every



five years; and also the medium value of the risk or premium.

		Value of 100l. Annuity.	Value of the Risk or Pre- mium of In- surance per Cent. for each Year.
From the age of 21 to 25 } both inclusive is		L. 1,310 16 0	2 12 6 $\frac{3}{4}$
26 to 30 ditto - is		1,251 2 0	2 19 10
31 to 35 ditto - is		1,191 0 0	3 7 11
36 to 40 ditto - is		1,130 4 0	3 16 11 $\frac{1}{2}$
41 to 45 ditto - is		1,071 6 0	4 6 8
46 to 50 ditto - is		1,047 0 0	4 19 0 $\frac{3}{4}$

Six years' purchase is the price of an Annuity upon a life of seventy.

N. B. The above Table of the different prices of 100l. Annuity is calculated allowing the purchaser 5l. per centum compound interest, on his purchase-money. Mr. Mavor has computed the possible profit, which may be made upon Annuities of six years' purchase of one life.

A person of seventeen has an equality of chance to live thirty-two years.

100l. Annuity on such a life will be paid thirty-one times.

100l. paid annually for thirty-one years and put out every year at five per cent compound interest is

L. 7076 1 7

But 600l. the price of this Annuity for thirty-two years, at five per cent. compound interest, gives only

2858 19 3 $\frac{1}{2}$

Difference is L. 4217 2 3 $\frac{1}{2}$

M m 4

Mr.

Mr. Mavor has made another calculation of the profit which may with reasonable probability be made by Annuities at six years' purchase.

The lives on which Annuities are bought, may be moderately taken one with another at fifteen years' duration.

First, 100l. Annuity for fifteen years will be paid fourteen times put out every year at five per cent. compound interest is - - L. 1959 17 3

Second, suppose the annual payments to be applied in purchasing Annuities at the like rate for fifteen years the produce will then be - - 6054 17 0

But 600l. the purchase of such an Annuity at five per cent. compound interest in  $14\frac{1}{2}$  years is but - 1217 13 1

Suppose the insurance of the 600l. to be deducted, not at its real value but at five per cent. compound interest 647 7  $1\frac{1}{2}$

The Annuity will then be 70l. and upon the first hypothesis the produce is 1317 18 1

Upon the second, it is - 4238 7  $10\frac{1}{2}$

Mr. Baldwyn the Register of the Amicable Society for a perpetual insurance-office at Serjeant's Inn informed your Committee, That the plan of that Corporation is to take 5l. annual payment and a premium of 7l. 10s. upon making the insurance; in consideration of which they pay to the assignees of the subscriber a rateable share of the whole payments of the current year, in which such subscriber dies. The Corporation admits all ages, from twelve to forty-five; but no more than three annual payments of 5l. each are allowed upon the same life.

In

In a period of forty-two years, the payments by this Corporation have been as follows :

From 1734 to 1757, the average dividend for each 5*l*.

L. 120 5 10

From 1758 to 1769                -                -                151 6 1

From 1770 to 1775                -                -                198 13 5

The rate of insurance in the first period is 4 2 0

in the second period 3 4 0

in the third                -                2 10 0

The average dividend for the whole forty-two years is 141*l*.

And the rate of insurance has been 3*l*. 10*s*.

Mr. Baldwyn informed your Committee, That he had calculated the duration of the lives insured at that Office for the last twelve years; and that one life with another it amounted to nineteen years.

Mr. William Morgan actuary to the Society of Equitable Assurances on Lives and Survivorships near Blackfriars Bridge, established in 1762 by deed of settlement inrolled in the Court of King's Bench, upon the same plan of the Union Fire-Office, informed your Committee, That every member becomes an insurer and answerable; if the premiums should not be sufficient to answer the claims, every member is liable to be called upon in proportion to the sum he had insured, if there is a call; the profits are to be divided amongst the members in the same proportion; but it is their intention in future to lower the premiums and to return to the present members the difference between the present premium and the future premium.—They insure any sum from 20*l*. to 2000*l*. for one life and any  
age



age from eight to sixty-seven. They likewise insure upon survivorships.

The mean rates of assurance on single lives in the Equitable Society, are at present,

From the Age of	For one Year.	ANNUALLY.			ANNUALLY.		
		For seven Years.			For Life.		
20 to 25	L. 2 0 0	L. 2 3 0	L. 3 5 6				
25 to 30	2 5 0	2 8 0	3 12 6				
30 to 35	2 11 6	2 16 0	4 2 6				
35 to 40	2 19 0	3 5 0	4 10 6				
40 to 45	3 11 0	3 18 6	5 3 0				
45 to 50	4 7 6	4 16 6	6 0 0				
50 to 55	5 4 6	5 15 6	6 15 0				
55 to 60	6 4 0	6 19 0	8 0 0				
60 to 65	7 6 6	8 13 6	10 3 0				

It must not however be inferred from hence, that the Society distinguishes the different ages into those several classes, and so rates the premium of assurance according to a fifth mean between the youngest and the oldest age. On the contrary as it proceeds entirely upon mathematical principles, so of course the premiums vary in every year of life; and it is evident, that its present surplus stock has not arisen from any inaccuracy in its calculations, but from making use of a table of observations, which gave the probabilities of life lower than they appear to have been in the Society. The premiums are also made higher by calculating at a lower rate of interest \*. It was however fair and necessary to take these advantages, not only towards defraying the expences of management, but guarding the Society during its infancy against any particular losses,

\* Three per Cent.

which

which it might not then have been so well able to sustain.

In order to determine the state of a Society, whose business consists in making assurances upon lives, there are three different methods, which may be employed; by each of which it can be ascertained how far the Society proceeds upon sure principles on the one hand, or requires exorbitant contributions on the other. The first method is by finding the proportions of the premiums to the claims. The second by comparing the number of persons that die in the Society with the number that should have died agreeable to the Table of observations, from which its premiums have been calculated. The third by investigating the present value of all the assurances and comparing the sum of those values with the stock or capital of the Society. It would take up too much time, and may probably be unnecessary to explain the principles, upon which the first and third methods are founded, but the second is readily conceived; for if a smaller number dies in the Society than the Table supposes should have died, a demonstration will arise of its thriving state; and if a larger number dies, the contrary will be proved.

The state of the Equitable Society has been lately examined by each of those methods; and they all agree in proving, that it is possessed of a stock not only sufficient to answer all its demands, but to secure it from any dangers, which may arise in an uncommon season of mortality. Hence by pursuing the first method, it appears that the claims during the last nine years, have on an average been annually above 3000*l.* less than they should have been.

By the second method, it is found that the proportions

tions of deaths in the Society to those in the Table of observations, from which the premiums have been calculated, are,

From the age of 20 to 30 as 7 to 17  
 30 to 40 as 3 to 5  
 40 to 50 as 1 to 2  
 50 to 60 as 2 to 3  
 60 to 70 as 7 to 5 or in all ages  
 from 20 to 70 as 2 to 3 nearly.

By comparing also the decrements of life in the Society, with those in Dr. Halley's Table, they are found to be,

From the age of 20 to 30 as 5 to 9  
 30 to 40 as 5 to 6  
 40 to 50 as 6 to 7  
 50 to 60 as 5 to 6  
 60 to 70 as 5 to 3 or in all ages  
 from 20 to 70 as 11 to 13 nearly.

By the third method, which is by far the most certain, it appears, that the present stock of the Society exceeds the values of all the assurances by 30,000*l.* and upwards.

In consequence of those concurring proofs of the flourishing state of the Society, it is now in agitation to reduce the premiums of assurance.

Mr. Taylor informed the Committee, That in valuing lives upon estates it was usual to take the value of the life according to the most approved Tables; and that interest was only taken at four per cent: that he never remembers any life valued so low as six years' purchase in any transaction for the purchase of estates; and



and that he has been very conversant in the buying and selling estates. That undoubtedly there is great difference in the real value of lives between the ages of twenty and fifty.

The Committee were satisfied from general information, that before the period, to which the evidence upon the first branch of their enquiry relates, being about twelve years, Annuities for the Life of the grantor were purchased at a price much nearer their real value than they have been since. Ten years' purchase upon good security has been given for a Life of fifty; nor was there one general price for all ages, but the value varied according to the estimate of the Life on which the Annuity was granted; whereas in the present mode of granting Annuities there is but one price taken for all ages between twenty and fifty.

The facts submitted to the consideration of the House will enable them to judge how far the Committee are warranted in the observations they have made and the resolutions formed upon them.

Six years' purchase is allowed to be the current price of an Annuity upon a Life from the age of twenty-one to the age of fifty.

If the transaction was intended to be a real sale, things so different in their value could not yield the same price.

The persons advancing their money upon Annuities at this rate, have a reasonable expectation, that the principal will be returned; and the persons to whom it is advanced have a confidence that they may repay it when they can.

The transaction then is formally a sale; but in substance it is a loan of money upon a perishable security; where the advantage taken bears no proportion to the hazard,

hazard, though that hazard may be estimated and in other transactions where there is a real sale of a Life interest, or a reversion expectant upon it, is estimated with reasonable certainty.

The exorbitant profit gained by this mode of advancing money, is contrary to the intention of the Law that regulates Interest upon Loans; it is a restraint upon all those, who have occasion to borrow upon a Life estate for any prudent purpose; and it is a public mischief in respect both of the gain and of the ruin which such bargains produce.

The excess of this profit may be corrected by limiting the gain of such bargains to legal interest and a reasonable compensation of that risk, which in cases under no peculiar hazard attends the security.

The value of the different classes of lives appears not only by calculations, upon which men daily act in the purchase of estates, but by the rate at which lives of different ages are insured with profit.

The compensation for the risk of the life to be taken upon a larger allowance not only than its real value, but even than the rate at which such risk may be insured, and the reduction of the price to a lower sum may be left to the competition that must arise in transactions which will no longer be disgraceful.

All advantage beyond the rate prescribed ought to be deemed usurious and made subject to the penalties provided against Usury; with an exception only of the lives of those, who, from the nature of their employment are exposed to peculiar hazards. And all Annuities ought to be redeemable; because, if a fair consideration is paid, the redemption can never be a loss to the person possessed of an interest, which is daily diminishing.

Upon the whole your Committee came to the following resolutions :

Resolved, That it is the opinion of this Committee, that the purchase of Annuities for the life of the grantor being generally intended as a loan of money ought to be regulated accordingly.

Resolved, That it is the opinion of this Committee, that four per cent is a sufficient compensation for the risk of a life above twenty-one years and under twenty-five years.

Resolved, That it is the opinion of this Committee, that  $4\frac{1}{2}$ l. per cent is a sufficient compensation for the risk of a life above twenty-five years and under thirty years.

Resolved, That it is the opinion of this Committee, that 5l. per cent is a sufficient compensation for the risk of a life above thirty years and under thirty-five years.

Resolved, That it is the opinion of this Committee, that  $5\frac{1}{2}$ l. per cent is a sufficient compensation for the risk of a life above thirty-five years and under forty years.

Resolved, That it is the opinion of this Committee, that 6l. per cent is a sufficient compensation for the risk of a life above forty years and under forty-five years.

Resolved, That it is the opinion of this Committee, that  $6\frac{1}{2}$ l. per cent is a sufficient compensation for the risk of a life above forty-five years and under fifty years.

Resolved, That it is the opinion of this Committee, that to take any larger annual sum than the legal interest of each 100l. advanced in the purchase of an Annuity for the life of the grantor together with the sums above specified being the values of the respective risks attending such Annuities ought to be made Usury.

Resolved, That it is the opinion of this Committee, that



that all Annuities for the life of the grantor ought to be redeemable on the payment of the sum advanced with the arrears of the Annuity to the time of payment.

Resolved, That it is the opinion of this Committee, that the Chairman be directed to move the House for leave to bring in a Bill upon the said Resolutions.

The first Resolution of the Committee being read a second time was upon the question put thereupon agreed to by the House.

The 2d, 3d, 4th, 5th, 6th, 7th and 8th, Resolutions of the Committee being severally read a second time were postponed.

The 9th Resolution of the Committee being read a second time, was upon the question put thereupon agreed to by the House.

The subsequent resolution of the Committee being read a second time,

Mr. Bacon moved the House accordingly.

Ordered, That a Bill be brought in upon the Resolutions now agreed to and on the Debate of the House on the said Report : And that Mr. Bacon Mr. Solicitor General Mr. Popham Mr. Newnham Mr. Ord Mr. Jackson Mr. Macdonald and the Lord Advocate of Scotland do prepare and bring in the same.

Ordered, That the said Report and Resolutions be printed.

N<sup>o</sup>. XXII.

17 Geo. III. c. xxvi.

*An Act for registering the Grants of Life Annuities ; and for the better Protection of Infants against such Grants.*

WHEREAS the pernicious practice of raising money by the sale of Life Annuities hath of late years greatly increased, and is much promoted by the secrecy with which such transactions are conducted ; be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

SECT. 1. " That a memorial of every deed, bond, instrument, or other assurance, whereby any Annuity or Rent Charge shall, from and after the passing of this Act, be granted for one or more life or lives, or for any term of years, or greater estate, determinable on one or more life or lives, shall within twenty days of the execution of such deed, bond, instrument, or other assurance, be inrolled in the High Court of Chancery ; and that every such memorial shall contain the day of the month, and the year, when the deed, bond, instrument, or other assurance bears date, and the name of all the parties, and for whom any of them are trustees, and of all the witnesses ; and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations of granting the same : otherwise every such deed, bond, instrument, or other assurance, shall be null and void to all intents and purposes.

N n

SECT.

SECT. 2. And be it further enacted by the authority aforesaid, "That before any judgment shall be entered of record upon any warrant of attorney for recovering or securing the payment of any Annuity or Rent Charge that hath already been granted for one or more life or lives, or for any term of years or greater estate determinable upon one or more life or lives, and before any execution shall be sued out, or action brought on any such judgment already entered, or on any deed, bond, instrument or other assurance already executed for the purposes aforesaid, a like memorial of the deed, bond, instrument, or other assurance, shall be inrolled in the High Court of Chancery; and in case the party shall neglect to inrol the same, any such judgment, execution or proceeding in the action respectively shall be null and void.

SECT. 3. And be it further enacted by the authority aforesaid, "That in every deed, instrument, or other assurance, whereby any Annuity or Rent Charge shall from and after the passing of this Act be granted, or attempted to be granted, the consideration really and *bonâ fide* (which shall be in money only), and also the name or names of the person or persons by whom, and on whose behalf, the said consideration, or any part thereof, shall be advanced, shall be fully and truly set forth and described in words at length; and in case the same shall not be fully and truly set forth and described, every such deed, instrument, or other assurance shall be null and void to all intents and purposes.

SECT. 4. And be it further enacted, "That if any part of the consideration shall be returned to the person advancing the same; or in case the consideration, or any part of it, is paid in notes, if any of the notes, with  
the



the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if the consideration, or any part of it, is paid in goods; or if any part of the consideration is retained on pretence of answering the future payments of the Annuity, or on any other pretence; in all and every of the aforesaid cases, it shall and may be lawful for the person, by whom the Annuity or Rent Charge is made payable, to apply to the Court, in which any action is brought, for payment of the Annuity, on judgment entered, by motion, to stay proceedings on the judgment or action; and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the deed, bond, instrument, or other assurance, to be cancelled, and the judgment, if any has been entered, to be vacated.

SECT. 5. And be it further enacted, "That a particular roll shall be provided and kept by the clerks of the inrollments in Chancery, or their deputy, on which such memorials shall be entered, and that every such memorial shall be duly inrolled in order of time, as the same shall be brought to the Office; and the said clerks of the inrollments, or their deputy, shall specify upon the roll the certain day, hour, and time on which such memorial is brought to the Office, and shall grant a certificate of the inrollment thereof when required; and that there shall be paid for the inrollment of every such memorial the sum of one shilling, and no more, in case the same do not exceed two hundred words; but if such memorial shall exceed two hundred words, then after the rate and proportion of sixpence for every one hundred words, and the like fees for every certificate and

copy given; and the fee of one shilling for every search in the Office, and no more.

SECT. 6. And be it further enacted by the authority aforesaid, " That all contracts for the purchase of any Annuity with any person being under the age of twenty-one years, shall be and remain utterly void, any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding: and that if any person shall, either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person being under the age of twenty-one years, to grant or attempt to grant any Annuity or Rent Charge, or to execute any bond, deed, or other instrument, for securing the same; or shall advance or procure, or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any Annuity or Rent Charge, to be secured or granted by such infant, after he or she shall have attained his or her age of twenty-one years; or shall induce, solicit, or procure any infant, upon any treaty or transaction for money advanced, or to be advanced, to make oath, or give his or her word of honour, or solemn promise, that he or she will not plead infancy, or make any other defence against the demand of any such Annuity or Rent Charge, or the repayment of the money advanced to him or her when under age; or that when he or she comes of age, he or she will confirm or ratify, or in any way substantiate such Annuity or Rent Charge; every such person shall be guilty of a misdemeanor, and being thereof lawfully convicted in any Court of Assize, Oyer et Terminer, or General Gaol Delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment as the Court shall think fit to award.

SECT. 7. And be it enacted by the authority aforesaid, "That all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and other persons or person, who, from and after the passing of this Act, shall ask, demand, accept, or receive, directly or indirectly, any sum or sums of money, or any other kind of gratuity or reward, for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and *bonâ fide* advanced and paid as and for the price or consideration of any such Annuity or Rent Charge, over and above the sum of ten shillings for every one hundred pounds so actually and *bonâ fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor; and being lawfully convicted of such offence in any Court of Assize, Oyer and Terminer, or General Gaol Delivery, shall and may, for every such offence, be punished by fine and imprisonment, or one of them, at the discretion of the Court; and that the person or persons who shall have paid or given any sum or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same.

SECT. 8. And be it further enacted, "That nothing in this Act contained shall extend to any Annuity or Rent Charge given by will, or by marriage settlement, or for the advancement of a child; nor to any Annuity or Rent Charge secured upon lands of equal or greater annual value, whereof the grantor was seised in fee-simple or in fee-tail in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said Annuity; nor to any voluntary Annuity granted without regard to pecuniary consideration; nor to any Annuity or Rent



Charge granted by any body-corporate, or under any authority or trust created by Act of Parliament; nor to any Annuity where the sum to be paid does not exceed ten pounds annually, unless there be more than one such last mentioned Annuity from the same grantor or grantors, to or in trust for the same person or persons."

## GENERAL INDEX.

### ABBOTS.

Grant of Annuity *in fee* by Abbot without the words *for him and successors* good 236.

### Action at Law,

Will not lie on an usurious contract 63.

Lies for the borrower only after payment or tender of the money 217.

On the Statutes of Usury to be brought within twelve calendar months 218.

Brought for the purchase-money of an Annuity after it has been avoided 433. 458.

### Acts of Parliament.—Vid. Statutes.

Propriety of repealing all old Acts on making a new one 64.

Cannot be without advice and consent of Lords and Commons 111.

Whether the banishment of the Jews by Act of Parliament 115.

How Courts construe them 420.

20 Hen. III. de Merton 81. 126. 127. 476.

2 Ed. I. 112. 127.

15 Ed. I. 118. 119. 470.

18 Ed. I. 110. 111. 470.

14 Rich. II. 29.

1 Hen. IV. 130.

3 Hen. VII. 76.

11 Hen. VII. 76. 484.

37 Hen. VIII. 63. 64. 65. 485.

5 and 6 Ed. VI. 132. 489.

13 Eliz. c. viii. 39. 133. 134. 135. 492.

13 Eliz. c. xx. 300.

14 Eliz. c. xi. 312.

18 Eliz. c. xi. 313.

39 Eliz. c. ix. 313.

21 Jac. 39. 138. 496.

3 Car. I. 138.

12 Car. II. 139. 499.

10 Car. II. 139.

16 Car. II. 436.

1 Ann. 123.

9 Ann. 436.

12 Ann. 140. 502.

3 Geo. I. 141. 505.

*Acts of Parliament.*

- 13 Geo. II. 135.  
 14 Geo. II. 142. 203.  
 26 Geo. II. 123.  
 14 Geo. III. 142. 507.  
 17 Geo. III. 123. 121. 545. App. XXII.

*Agent.*

Whether the payment of all their charges in Annuity-transactions make a part of the consideration to be specified in the memorial 384 to 392.

Names of agents who pay the consideration to be set forth at full length in Annuity-deeds 405. 406.

*Agreement.—Vid. Contracts.**Alien.*

Alien-brokers forfeit all to the King 72.

Their incapacities common to all, of all religions, &c. 90. 91.

*Amerciaments.*

Ecclesiastical benefices not liable to them 313.

*Annuity.*

What Lord Hardwicke said of dealers in Annuities 165.

Political tendency of the evil of Annuities 228. 256.

Mr. Erskine's idea of the evil 232.

Definition of 212.

Difference between Annuity and Rent Charge 233.

Annuity by prescription 233.

Of electing the remedies and thereby determining whether it be Annuity or Rent Charge 234. 235. 239. 240.

A grant without the words *for his heirs only* for life 236.

Otherwise from a corporation 236.

How a void Rent Charge may be a good Annuity 237.

Annuity of inheritance is forfeitable for treason 238.

Being personal not an hereditament within Statute of Mortmain 238.

Not intailable within Statute *de donis* 238.

A fine cannot be levied of it 238.

Shall not be taken for assets, not being a freehold in the Law 238.

Nor put in execution on *Elegit* Statute Merchant or Staple 238.

Is assignable over 239.

Where writ of Annuity lieth not 242.

How Annuities become extinct 243. 244.

Of the remedies for recovering Annuity 244. 245.

Vests not in executors 245.

Annuity in fee is a personal inheritance and goes to heir 245.

Writ of Annuity lieth against the heir (if included in the grant) 246.

It lieth only while Annuity is payable 246.

Of the Sheriff's return to writ of Annuity 247.

How far Annuities are usurious 258. 262. 263.

Lord Hardwicke thought most of them usurious 259.

Annuity would be usurious if any provision for the repayment of the principal 260.

Of the clause for redeeming or re-purchasing from 266 to 271.

Whether insurance of Annuities render them usurious 272.

Of



*Annuity.*

- Of the *real* and *market* prices thereof 282.
- A memorial thereof to be registered 327.
- Utmost possible notoriety given by the memorial 329.
- Of setting forth the secret trusts in the memorial 336.
- Grantee must register a memorial of an Annuity granted before the Act ere he proceed at law 337.
- Annuity deeds void which mention not the names of the persons paying the consideration and on whose behalf 338. 340.
- Whether the consideration must be *in money only* 338. 342. 374.
- Contracts for Annuities with minors void and punishable as misdemeanors 343. 344.
- Of the cases excepted out of the Act 346 to 351.
- Every deed securing an Annuity must be registered 358.
- Warrant of attorney for confessing judgment on Annuity bonds to be registered 359.
- Deeds of sureties to be also registered 361.
- Judgment to secure it needs not to be registered 363.
- Partial assignments of Annuities to be registered but not assignments of the whole 363. 364. 399 to 402.
- Date of each deed to be mentioned in memorial 365.
- All the trusts of Annuity deeds to be mentioned in memorial 368.
- Variance of opinions upon the necessity of setting forth trusts not affecting the Annuity 369 to 372.
- Notes given for Annuities must specify dates 374. 375.
- Void from memorials falsely stating the consideration 379 to 382.
- Every part of the contract makes a part of the consideration 383.
- The payment of law charges ought to be specified in the memorial 384 to 392.
- The twenty days are exclusive of the day of the grant 395.
- Various opinions whether one void deed avoid the whole assurance 394 to 399.
- A doubt upon the necessity of registering assignments 399 to 402.
- Of one Annuity's being the consideration of another 402 to 405.
- The names of agents who pay the consideration to be set forth in the deed 405 to 406.
- Of retaining part of the consideration 407. 408.
- Who may apply to the Courts for vacating the securities 409 to 412.
- Whether a grantor be barred his remedy by lapse of time or his own laches 413 to 420.
- Difference of opinion thereupon. *Ibidem*.
- Of the authority and jurisdiction of the Courts in entertaining applications and giving redress under the Annuity Act 420 to 435.
- Of the revival of the original contract upon the avoidance of the Annuity 435 to 450.
- Indictment lies against brokers, &c. for taking any thing beyond 10s. per 100l. : the quantum needs not to be proved 452.
- Equitable* as well as *legal* tenancies in fee and tail within the exception of the Annuity Act 454.
- When Courts order Annuities to be vacated they order the money to be restored 458.

*Annuity Act.—Vid. Statutes.*

- It's consequence to individuals 317.
- Brought in by the present Chancellor 318.
- The original bill 319. 323. 324.
- Comes down from the House of Lords 320.

A new

*Annuity Act.*

- A new bill brought in 320.
- The original plan divided 320.
- The second bill (the present Act) less extensive than the first 324.
- Of the preamble and equity of the Act 324. 325.
- First section of the Act 326.
- Legislature's intent in making it 325. 326.
- Of registering a memorial of the transaction 327.
- Particular views of the Legislature in passing it 328.
- Second section of the Act 335. 399.
- Third section of the Act 337. 405 to 407.
- Fourth section of the Act 341. 407 to 435.
- Fifth section of the Act 343. 435.
- Sixth section of the Act 343. 435.
- Seventh section of the Act 345.
- Eighth section of the Act 346. 453. 454.
- Exceptions to the Act 346. 453. 454.
- Monstrous principle of giving effect to it seven months before it passed into a law 355.
- Is an extremely remedial law 357. 358. 373.
- To be *literally* pursued 369. 373.
- Of the power of the Courts in entertaining application and giving redress under it 420 to 435.
- Mr. Powell's argument upon construing the Annuity Act like the Gaming Acts 436 to 450.
- Draught of the original bill and amendments brought in by Mr. Wedderburn. App. No. XX.
- Draught of Mr. Bacon's bill to ascertain the price of Annuities and report of the Committee. App. No. XXI.
- The Annuity Act. App. No. XXII.

*Application to the Courts.*

- Before and since the Annuity Act 285.
- Who may apply for vacating Annuities 409 to 412.
- Of being barred by lapse of time and laches of the party 413 to 420.
- What Courts will entertain applications for setting aside Annuities 420 to 435.
- Courts order the money to be restored when they vacate Annuities 458.

*Assignment.*

- Of registering assignments of Annuities 363. 364. 401.

*Assumpsit.*

- Brought for the value of the Annuity avoided 423. 453.

*Assurances.—Vid. Securities and Deeds.**Authority of Courts.*

- Whether they have authority to punish the neglect or laches of the grantor in not applying for redress 413 to 420.
- Difference of opinion hereupon. Ibidem.
- In entertaining applications and giving redress under the Annuity Act 420 to 435.

*— Spiritual or Ecclesiastical.*

- Usury not to be regulated by it 38.

Different

*Authority Spiritual or Ecclesiastical.*

Different from temporal 53.

Has no jurisdiction *ex natura sua* to check crimes by coercive means 77.

*Temporal or Civil.*

Civil magistrate may control indifferent actions but cannot counteract the law of nature and grace 6. 15. 24.

Usury to be regulated by it 38.

Different from spiritual 53.

*Attorney.—Vid. Warrant of, and also Solicitor.**Banishment,*

Of the Jews by Parliament 113. 114.

Coke and Prynne differ about their banishment being by Parliament 114.

Banishment a personal punishment 115. 122.

*Bank Notes,*

Are cash when not objected to 376.

*Bargain.—Vid. Contract and Consideration.*

In an information for Usury the bargain must be laid to be *corrupt* & not so in a verdict 222. 233.

*Benefices.—Vid. Ecclesiastical Livings.**Bishops.—Vid. Ordinaries.*

They suggested a clause against Usury in 21 Jac. 1. 39. 137.

Had the punishment of Usurers by common law 67. 71. 72. 75. 76.

They dissuade the King from punishing Jews 95.

Their spirit of toleration the ground of an Act of Parliament in favor of the Jews 118.

Trustees of their immunities and rights for their successors 126.

Become ecclesiastical sheriffs in sequestrations 302.

*Bond.*

Of the effects of bonds executed in foreign countries 207.

May be put in suit here for the interest of the country 208. 209.

Whether clergymen's bonds and warrants to confess judgment become void when the Annuity deeds are so 302. 303.

*Bottomry*

Bonds not within the Statutes of Usury 188. 189.

*Brokers.*

Alien-brokers forfeit all to the King 72.

Punishable by 21 Jac. I. for taking more than one half per cent. 138.

Guilty of misdemeanor and punishable by the Annuity Act for taking more than 10s. per 100l. 345. 450.

*Canon Law.*

The old Canon Law before 1606 is *common law* 298.

Not necessary to be confirmed by Parliament 298.

Cestuy



*Cestuy que Trust.*—Vid. *Trustees.*

*Civil.*—Vid. *Authority, Courts, Magistrate and Power.*

*Chancellor.*

Present Chancellor brought in the Annuity Act in 1777. 318.

*China.*

Usury of 30 per cent. allowed to be taken there 40. 41.

*Clergy and Clerks.*—Vid. *Living, Ecclesiastical Property, and Sequestration.*

They formerly ingrossed all learning 15.

Their influence over the laity 27. 73. 118.

Trustees of their rights for their successors 127.

Of the sequestration of their livings 306 to 313.

*Common Law.*—Vid. *England, Usury, &c.*

Against Usury arose out of the general prejudices 45. 46.

What meant by common law of England 61.

Cannot be altered but by express Statute 61.

According to Lord Coke the common law of Usury abolished 62. 63. 143. 211. 212.

No action lies on a contract usurious at common law 63. 143.

Some Usury punishable in common law courts 71. 75. 148.

Common law never permitted the taking of 1 per cent. 152.

De Grey of opinion that common law of Usury is not abolished 154. 157. 159. 220.

Old canons a part of the common law 299.

*Consideration.*

Of the adequacy of the consideration of the Annuity 275.

Of the inadequacy 278.

Of a valid consideration for an Annuity 284.

Of considerations *pro turpi causa* 285.

Of granting Annuities 330.

Whether the expences and brokerage make a part of it 331.

Whether it must literally be for *money only* 338. 339. 341. 342. 374.

May as well be recited as averred in the memorial 378. 393.

Falsely stated in the memorial vacates the deed 379 to 382.

Terms of the contract make a part of it 383.

Payment of law charges a part of it 384 to 392.

Needs only to be *once* mentioned in memorial 393.

Of one Annuity's being the consideration for another 402 to 405.

The names of agents who pay it to be set forth in the deed 405. 406.

Of retaining part of it 407. 408.

*Contract.*—Vid. *Usurious.*

Of contracts entered into in foreign countries 207.

Of the general validity of a contract 209.

Of contracts upon inadequate considerations 278.

Whether the payment of the grantee's charges by the grantor of an Annuity be part of the consideration 332.

With minor for Annuities void and punishable 343. 435.

Terms of the contract make a part of the consideration 383.

Mr. Powell's

*Contract.*

Mr. Powell's argument on supporting the contract after the avoidance of the securities 435 to 450.  
Of the revival of the original contract. *Ibid.*

*Construction.*

How the Act of Hen. VIII against Usury to be construed 134.  
Annuity Act to be construed remedially and literally 357. 358. 359. 373.

*Corporation.*

May grant Annuity in fee without the words for their heirs and successors 236.  
What interest they were allowed to borrow money on in the Papal territories 464.

*Covenant.*

Of the effects of a covenant executed in foreign countries 207.

*Councils.*

Their decrees against Usury 31.  
Councils of Constance and Trent said nothing of it 36. 37.

*Damages.—Vid. Usury.**Date.*

The twenty days given for registering memorials by the Annuity Act are exclusive of the day of the date of the deeds 395.

*Day given for Payment.—Vid. Usury.**Debt.—Vid. Usury Annuity Assumpsit Action at Law.**Deeds.—Vid. Security.*

Annuity deeds declared void which do not contain the names of persons by whom and on whose behalf the consideration-money is paid 337.  
When one is void, whether all that secure the Annuity be so 394 to 399.

*Disclosure.—Vid. Memorial.**Dividends.*

Annuities made payable out of them excepted out of the Act 347.

*Divines.—Vid. Theologians.**Ecclesiastical Courts.—Vid. Spiritual.*

Jurisdiction over Usury saved to them by 13 Eliz. 62. 67. 136. 147.  
Acknowledged by Parliament 67. 72. 74. 76. 148.

---

*— Livings.*

Evil of charging them with Annuities 288.  
Their end and purpose 297.  
Forbidden by 13 Eliz. c. xx. 300.  
Whether bonds and judgments can affect them 304.  
Not assignable or chargeable either at law or equity 305.

*Eccle-*

*Ecclesiastical Goods.—Vid. Sequestration.*

Formerly exempted from law-process and taxes 309.

*——— Laws.—Vid. Canon.*

How part of the Ecclesiastical Law is Common Law 76. 77.

Persons formerly exempted from law-process and taxes 309.

*Election.*

Of remedies for an Annuity or Rent Charge 235.

Of determining this election 241. 242.

*England, Laws of.—Vid. Common Law.*

Against all unfairness in money-bargains 2.

*Errors.*

Clerical will not vitiate a memorial 383.

Nor convert an Annuity into a Loan 264.

*Exceptions,*

Out of the Annuity Act 346. 347.

Of the exception of tenants in fee and in tail 348. 349.

*Exchange.*

Dry exchange what it is 127. 128.

*Execution.*Annuity shall not be put in execution on Elegit Statute-Merchant &c.  
238.*Fathers Holy.*

Their ideas of Usury 15. 19. 26. 57. 58.

Invectives of Greek Fathers against Usury 28. 29.

Ditto of the Latin Fathers 30.

*Fee-simple and Tail.—Vid. Exceptions.*

Tenants granting Annuities excepted out of the Act 348. 349.

*Fieri Facias.*

De bon. eccl. 302. 409.

*Fine,*

Cannot be levied of an Annuity 238.

*Forfeiture.*

Annuity forfeitable for treason 238.

*Forms of Memorials,*

Cannot be fixed 328. 329.

*Fraud.*

Different species of it according to Lord Hardwicke 283.

*Funds.*



*Funds.—Vid. Stocks.*

Annuities secured out of them and excepted 347.  
This exception not noticed by Court 368.

*Gaming.*

Security for a gaming debt void in the hands of a third person not privy 214.  
Both parties in gaming contracts *in pari delicto* 215.  
Of the construction of the Acts against it 436.

*Goods.—Vid. Ecclesiastical and Spiritual.**Grants.—Vid. Annuities.**Half-pay.—Vid. Pay.*

Not assignable 296.

*Heir.—Vid. Annuity.*

Grant of Annuity without the words and for *his heirs* is only for life 235.

*Jews.—Vid. Judaism.*

Formerly prohibited to take Usury from each other but permitted to take it from strangers 12. 19. 20. 25.  
Prohibition of Usury confined to the Jews 26.  
A species of Usury practised by the Jewish priests 56.  
Allowed in England to take Usury by common law 78. 81. 82. 89. 100. 122. 147.  
Not to have Usury against a minor 78. 79. 81.  
Their introduction into England 84.  
The first Law concerning them 86.  
King had a right to all their property 87. 100. 101.  
Ought not to be punished for their religious belief 90.  
Unjust prejudices of this nation against them 90. 91. 100.  
*Judaism* a name of profession not of nation 90.  
Dreadfully massacred and persecuted in England 93. 94. 106. 107.  
Protected by the King at the recommendation of the Bishops 96. 118.  
Of their registering all their deeds in the Star-chamber 97. 98.  
Grant of a High Priest by King John 99. 469.  
A species of corporation governed by their own bye-laws 100.  
Of those that turned Christians forfeiting all to the King 102.  
Horridly persecuted by Henry III 104. 105.  
The crimes alledged against them 106.  
A Judge appointed over them by Parliament 104.  
Allowed to take 2d. per 1s. per week, i. e. 40 per cent per ann. 108.  
Whether their banishment compulsory or voluntary 112. 113. 114.  
It was compulsory by Parliament 115. 121.  
For more than 500 years no other Law made concerning the Jews than such as are beneficial 123.  
Foreign Jews now treated by the Laws as other Aliens 124.  
English Jews as other subjects (except as to the Test Acts, &c.) 124.  
Charters of King John to the Jews 466. 467.  
Statute de Judaismo 470. 1. 2. 3.  
Writ of safe conduct to the Jews when banished 476.  
Writ to the Prior of Bridlington to pay 300l. which he owed to a Jew before banishment unto the King 475.

*Inade-*

*Inadequacy of Price.*

How Annuities may be thereby affected 280 to 284.  
Of it's general effects upon other transactions. *Ibid.*

*Indictment,*

For taking more than 10s. per 100l. for negotiating an Annuity 451.  
The *quantum* of excess needs not be specified as in Usury 452.

*Infants.*

Contracts with them for Annuities void and punishable as misdemeanors 344. 435.

*Inrolment.*

Difference between that and registering 327.  
Of the effects of deeds executed before inrolment 411.

*Insurance.*

Whether it render Annuities usurious 372.

*Instrument.—Vid. Assurances and Deeds.**Intention.*

Often creates Usury 176. 201.

*Interest.*

30l. per cent. allowed of in China by Christians 41.  
Usurious to withhold it out of the principal lent 178.  
Over-ruled in the Common Pleas 179.  
Of taking excessive Interest on non-payment at a given day 182.  
183.  
Where the Interest only is hazarded it will be Usury 193.  
Upon bond recoverable here at the rate of the country where the bond was entered into 209.

*Interpretation.—Vid. Construction.**Judgment.*

Effects of judgments on ecclesiastical livings 303. 304.  
For securing Annuity needs not be registered 363.

*Jurisdiction of Courts.*

Of the jurisdiction of the Courts in entertaining applications and giving redress under the Annuity Act 420 to 435.

*King,*

Had a right to all the property of dead Usurers 75. 79.  
The same of all Jews 86. 87.  
King's prerogative checked and controlled by Parliament 105.  
Character of King Henry III 109  
Cannot banish any subject 115. 119.  
May grant Annuity in fee without the words *for my heirs and successors* 236.

*Laches.*

*Laches.*

Whether a grantor of an Annuity be barred his remedy by lapse of time or his own laches 413 to 420.

Whether the laches of the grantee of an Annuity will raise an implied contract in the grantor to restore the purchase-money 445.

*Lands.—Vid. Rent Charge.**Law Canon.—Vid. Canon Law.**— Common.—Vid. Common Law.**— of Nature,*

Written in every man's heart 19. 25. 46.

Many nations punished Usury as against it 27. 147. 160. 161.

Is unchangeable 46.

*— Statute.*

Effect of the Statute Law of Usury 151.

*Limitation,*

Of time with reference to the Annuity Act 413 to 420.

*Loan.*

Whether Usury can exist without it 163. 193. 196. 205. 206.

*Magistrate—Vid. Civil.*

Ought to regulate Usury 38. 149.

Cannot punish for religious opinions 90.

Cannot sanction indirectly what he cannot expressly direct or order 138.

His duty to render private rights conducive to the good of the whole 149.

*Marriage Brocade Bonds.*

Security given for procuring a match void in the hands of a third person 214.

Invalid because publicly detrimental 285.

*— Settlements.*

Annuities secured under them excepted out of the Annuity Act 346.

*Memorial.*

Difference between those required by the Annuity Act and the regulating Acts for York and Middlesex 327.

Notoriety required by the memorial 329.

No set form of it can be fixed 328. 329.

Whether it ought to set forth the law expences 331. 384 to 392.

Necessity of setting forth the secret trusts in the memorial 334.

Must be registered though granted before the Act ere proceedings can be had 337.

Must so state each deed as to specify the Annuity which it affects 362.

Needs not state a judgment 363.

Must contain the date of each deed 365. 366.

Must contain the names of all witnesses 366. 367.

O o

Must



*Memorial,*

- Must contain all the trusts of the Annuity deed 367. 368.
- Must mention dates of notes given for Annuities 375.
- Whether it ought to specify the payment by a banker's check 377.
- Recital of the consideration as good as averment 376.
- Deed void where memorial states falsely the consideration 379 to 382.
- Not vitiated by clerical errors 383.
- Ought to set forth the payment of the law charge 384 to 392.
- Deeds only *once* mention the consideration 393.
- Whether it ought to contain assignments 364. 399 to 402.

*Misdemeanor.*

- To contract with minors for Annuities 343.
- In a broker or scrivener for taking more than 10s. for 100l. for negotiating an Annuity 345.

*Money.*

- Whether the consideration of Annuities must be for *money only* 338. 342. 374.
- Bank notes are money when not objected to 376.

*Mortgage Mortgagee and Mortgager.*

- Ejectment will not lie upon a mortgage void for Usury 171.
- Difference between a derivative mortgage and the transfer of the original mortgage 204.
- Of the effects of mortgages executed in foreign countries 207.

*Moses, Law of.*

- Different from Law of Grace 11.
- Prohibits Usury 12. 18. 19. 25. 38.
- Some Usury allowed under it 55.

*Motion.—Vid. Jurisdiction of Courts and Application to Courts.**Names.*

- Every Annuity deed must contain the names at full length of the persons paying the consideration 337. 340.

*Nature.—Vid. Law.**Note of Hand.*

- Whether money 342. 374. 375.

*Officers Civil.—Vid. Pay and Half-pay.*

- Cannot charge their offices with Annuities 289.
- Allowed in many cases for many years 289 to 294.
- Now irrevocably determined to be unalienable 296.

*— Military.*

- Mischief of securing Annuities on their pay 287. 288.

*— Naval.*

- Cannot charge or assign their pay 289.

*Oppression.*

*Oppression.*

Oppressive Usury against written and unwritten Law 43. 48.  
All oppression against the Law of Nature 47. 259.

*Ordinary.*—Vid. *Bishop.*

*Particeps Criminis.*

Whether both parties so in Usury 215.

*Pay.*—Vid. *Officers.*

Not assignable or chargeable with Annuities 288.  
Long holden otherwise 289 to 294.  
Now irrevocably determined to be unalienable 296.

*Payment giving Day for it.*—Vid. *Usury.*

*Penalty.*—Vid. *Usury Damages and Brokers.*

*Popes.*

They condemn Usury 42.  
Gregory IX orders the Bishop of Durham to repay a debt of his predecessor with moderate Interest 43.  
Benedict XIV decrees concerning Usury 461. to 465.

*Possession.*

Tenants in fee-tail in possession excepted out of the Annuity Act 454.

*Post Obit.*

Bargain without fraud not usurious 191.  
Lord Hardwicke's opinion of them 259.

*Power.*—Vid. *Authority.*

*Prescription.*

Annuity by prescription 233.

*Procurer and Procuration.*—Vid. *Brokers and Scriveners.*

*Property,*

The creature of the civil power 53.

—— *Nature of.*—Vid. *Ecclesiastical and Spiritual.*

*Purchase and Purchasers.*—Vid. *Annuities.*

*Receipt,*

Of the consideration of an Annuity must be explicitly set forth in the memorial 384 to 392.

*Recital.*

Consideration mentioned in the memorial as good by way of recital as of substantive averment 339. 376.

*Redemption.*

Of clauses for redeeming or re-purchasing Annuities 266. 269.

*Registering.*

Difference between that and enrolment 327.

*Release.*

Of actions personal a good bar to an Annuity even with a clause of distress without the word *heirs* 237.

*Rent Charge.—Vid. Annuity.*

Difference between Annuity and Rent Charge 233.

Of determining by election of remedies whether it shall be Annuity or Rent Charge 234. 235.

How a void Rent Charge may be a good Annuity 237.

What Rents shall not be converted into Annuities 240.

*Retaining and Returning.—Vid. Annuity.*

Part of the consideration of an Annuity how it affects and what powers it gives the Court to order the deeds to be cancelled, &c. 341. 407. 408.

*Sale.—Vid. Annuities.**Scire Facias.*

Whether an action within the second section of Annuity Act 384.

*Scriptures Old and New.*

Usury prohibited in the Old Testament 12. 13. 19. 33.

How far prohibited in the New 23. 24. 55.

*Security.—Vid. Assurances and Deeds.*

Securities when void and not voidable under the Annuity Act 341. 342.

Every deed securing an Annuity to be registered 358.

Warrant of attorney for confessing judgment on an Annuity bond is such security 359.

Such also are deeds from sureties 361.

*Schoolmen.*

Their ideas of Usury 26. 37.

*Scrivener.—Vid. Brokers.**Sequestration.—Vid. Ecclesiastical Livings and Property.*

Origin nature and effects of ecclesiastical sequestrations 306 to 313.

*Sheriff.*

Bishop acts as sheriff on ecclesiastical property 302.

*Solicitor.—Vid. Broker and Scrivener.*

Punishable for a misdemeanor in taking above 10s. per 100l. in negotiating Annuities 345. 450. 461.

*Statutes.—Vid. Acts of Parliament.*

Propriety of repealing all old Acts when a new one is made 64.

Judges bounden to notice them 301.

Monstrous rule of giving effect to them from the first day of the Session 355.

Stat.



*Statutes.*

- Stat. of Merton, 20 Hen. III. Usury shall not run against a minor  
81. 103. 126. 476.
- 2 Ed. I. Ditto 112.
- 15 Ed. I. Usury declared punishable by the Ordinary 67.  
Whether this Act were repealed the same year 70. 71.
- 18 Ed. I. Statutum de Judaismo 110. 111. 118.  
119. 122. 127. 470.
- 14 Rich. II. Dealers in exchange obliged to lay out the amount in goods 29.
- 1 Hen. IV. Masters of the exchange appointed by the King 180.
- 3 Hen. VII. Acknowledges the ecclesiastical jurisdiction over Usurers 76.  
c. 5. Against dry exchange
- 11 Hen. VII. Repeals 3 Hen. VII. and provides more effectually against Usury 76. 482.
- 37 Hen. VIII. A bill against Usury 62. 64. 485.  
Whether this Act repealed the common law of Usury 65.  
Total change in the laws of Usury from this time 130.  
The word *loan* does not occur in the Act 132. 154.  
To be construed largely for suppressing the usage 134.  
Confirms old canons 299.
- 5 and 6 Ed. VI. Repealed the Act of Hen. VIII and punished Usury more severely 132. 489.
- 13 Eliz. c. viii. Legislative prejudices against Usury 39.  
Revives the Act of Hen. VIII. and increases penalties 133. 492.  
Declares how the Act of Hen. VIII. to be construed 134. 492.  
Debates upon it in the Commons 135.
- c. xx. Church livings unalienable 299.  
Of the term *charging* under the Act 307 to 315.
- 14 Eliz. c. xi. Continued the 13th Eliz. c. xx. 312.
- 18 Eliz. Regulates the sequestration and how it shall be applied to parochial purposes 313.
- 39 Eliz. c. ix. Continues 13 Eliz. c. xx.
- 21 Jac. I. Legislative prejudices against Usury 39.  
Reduces the rate of Interest from 18 to 8 per cent. 137.  
Confirms the old and adds new penalties on brokers 137. 138. 496.
- 3 Cha. I. Act of Ja. I. for seven years made perpetual
- 12 Car. II. Reduces Interest to 6 per cent. 139. 499.
- 13 Car. II. Confirmed the former Act 139.
- 16 Car. II. Against gaming 436.
- 9 Ann. Against gaming 436.

Stat.

### Statutes.

- |                         |  |
|-------------------------|--|
| Stat. of Merton, 1 Ann. | Chancellor may provide for the Pre-<br>testant child of a Jewish parent 123.                   |
| 12 Ann. c. xvi.         | Interest reduced to 5 per cent. 140.<br>502.   |
| 3 Geo. I.               | Some Interest <i>allowed of</i> by Law to be<br>taken 142. 505.                                |
| 13 Geo. II.             | Jews dispensed with swearing upon the<br>faith of a Christian 123.                             |
| 14 Geo. II.             | 6 per cent allowed of in the Plantations<br>142. 203.  |
| 26 Geo. II.             | Jews might be naturalized without tak-<br>ing the sacrament 123.                               |
| 27 Geo. II.             | Repealed 123. 124.   |
| 14 Geo. III. c. 79.     | For settling the Interest to be taken on<br>securities in Ireland and Plantations<br>142. 507. |
| 17 Geo. III. c. 26.     | Annuity Act 323. (App. No. XXII.)  |
| 33 Geo. III. c. 13.     | Every Act to operate from the day<br>of the royal assent 356.                                  |

*Stock-jobbing.*

- Sir John Barnard's Act 197.  
Of continuation and backadation premiums 198.  
Contracts put both parties *in pari delicto* 215.

*Sureties.*

- Quasi trustees to some purposes 336.**  
**Their separate deeds for better securing Annuities must be registered 361.**  
**Not answerable for the purchase-money when the Annuity is declared void 446.**

## Tenants for Life,

- Can give as good security for Annuities for their own lives as tenants in fee 349.454.

*in Fee-simple.*

- Equitable* as well as *legal* within the exception of the Annuity Act  
454.

*in Fee-tail.*

- What things intailable and what not 238.  
*Equitable* as well as *legal* estates within the exception of the Annuity  
 Act 454.

*Tender.*

- Bank notes when offered to be turned into cash are a legal tender 376.

Test Law,

- Excludes not only Jews but many millions of British subjects from the advantages of the State 93.

Theology

*Theology and Theologians.*

- Divines ideas of Usury 14. 15. 52.
- Difference between their theory and practice 16. 26.
- Divines of the Reformed Church vehement against Usury 33.
- Calvin and St. Thomas Aquinas agree about Usury 36. 37.
- Gerson's rational opinions of Usury 38.
- Usury out of their resort 53.
- Lord Chief Justice Lea said we ought to be informed by them upon the lawfulness of Usury 161.

*Time.—Vid. Limitation of, and Annuities.**Transfer of Stock.*

- Loan of stock not usurious though the dividends exceed five per cent 187.
- Annuities secured by actual transfer of stock excepted out of the Annuity Act 346. 453. 454.

*Trust and Trustees.*

- Necessity of setting forth secret trusts in the memorial 336. 337.
- Sureties to some purposes trustees 336.
- All trusts of Annuity deeds to be mentioned in the memorial 367. 368.
- Variance of opinion upon the necessity of specifying all trusts not affecting the Annuity 369 to 372.

*Usury.*

- The term seldom understood 2. 10.
- Defended by Mr. Bentham 4. 150. 172.
- By it's nature not contrary to the law of nature or grace 5. 13. 52. 54.
- General nature of it 10. 14.
- Different distinctions of Usury amongst Jews and Christians 15.
- According to some permitted by God to exterminate his enemies 19.
- Permitted to Jews as a reward and encouragement 20.
- Whether confined to loans to the poor 21. 22.
- Punished by many as against nature 27. 161.
- St. Basil's portrait of an Ufurer of his time 28. 29.
- Condemned by the Greek and Latin Fathers 29. 30. 31.
- Do. by Councils 31. 32.
- Progress and extension of it 32.
- Calvin's opinion in favor of it's lawfulness 34.
- St. Thomas Aquinas agrees with Calvin 36. 37.
- Gerson's rational opinions of Usury 38. 53.
- Legislative prejudices against Usury 13 Eliz. and 21 Jac. 1. 39. 161.
- Condemned by several Popes 41. 42.
- Allowed to be paid by Bishop of Durham 43.
- Benedict XIV decrees against it 44. 45.
- Whether sinful to pay Usury 48.
- Whether it be *malum in se* 50. 136. 254.
- Dr. Wilfon's violent condemnations of Usury 50. 51. 129.
- Not of the resort of the spiritual powers 53. 77.
- Grotius's ideas of it 58. 59.
- Allowed of and recommended by St. Chrysostom 57.
- Common law of Usury abolished according to Lord Coke 62. 63. 157. 159. 211. 212. 220.
- Ecclesiastical jurisdiction over Usury saved by 13 Eliz. 62. 136. 147.
- Recognized



*Usury.*

- Recognized by 15 Edw. III. 67. and 6 Rich. II. 211.  
 Punishable by the Ordinary 67. 71. 72. 75. 76.  
 Attempts of the Commons to bring it under the jurisdiction of the  
 Temporal Courts 70. 71. 72.  
 Difference between Usury punishable in the Common Law Courts and  
 by the Ecclesiastical Courts 11. 12.  
 Some Usury punished in the Common Law Courts 72. 75.  
 Permitted to the Jews in England by Common Law 77. 78. 81. 89. 103.  
 122. 130.  
 Not to run against a minor 67. 103.  
 All Usury prohibited to Jews as well as Christians 112. 113.  
 Dry exchange a species of Usury prohibited by 8 Hen. VII. 127.  
 Total change in the laws of Usury from 37 Hen. VIII. 130.  
 Whether sanctioned by statute 137. 140.  
 Six per cent allowed of in West-Indies and Ireland 142. 203.  
 Whether common law and statute Usury co-extensive 144. 146. 148.  
 Equity of our laws against it 150. 231.  
 Doubt whether all as well as griping Usury forbidden 161.  
 Whether it can exist without a loan 163. 193. 205. 206.  
 Attempts to evade the statutes 163.  
 No shift shall take a case out of the statutes 166. 175.  
 Colorable sales of goods usurious 167 to 171.  
 Not necessary that the excessive Interest be in money 173.  
 Larger profit than five per cent sometimes allowable 174. 180.  
 May exist though the principal be not returnable 176.  
 Admits of no degrees of guilt 177.  
 Not usurious to take excessive Interest upon non-payment at a given  
 day 183.  
 A loan of stock not usurious though the dividends exceed five per cent  
 187.  
 In loans upon casualty, if the casualty be real and affect the Principal  
 Usury: *secus* if colorable and the casualty only affect the Interest 187.  
 Colorable and slight contingencies take not a case out of the Statute 193.  
 Whether continuation premiums usurious 200. 201.  
 Definition of modern Usury 194.  
 Of the parties injured in Usury 210.  
 If in Usury both parties be *in pari delicto* 215.  
 Borrower may be a witness to prove Usury 216.  
 Borrower cannot bring his action till he has repaid 217.  
 Action on the Statute to be within twelve calendar months 218.  
 Propriety of the laws against Usury 251. 252.  
 Of the effects of Usury in former days 257.  
 Annuity usurious if any provision for repaying Principal 260.  
 What essentially constitutes an usurious loan 264.  
 Methods of evading the Statutes of Usury 265.  
 How far clauses for repurchase in Annuity deeds usurious 266.  
 Whether insurance of Annuities render them usurious 272.

*Usurious Contract.*

- No action will lie on a contract usurious at Common Law 63. 161.  
 Corrupt contract annuls the security 152.  
 If Usury can exist without a previous contract 155.  
 Without taking usurious Interest incurs not treble forfeiture 156. 157.  
 What necessary to constitute it 163.

*Usurious Contract.*

A contract for more than 5 per cent. made before the Act of Ann not affected by that Statute 176.

Will be so on contingencies slight or colorable 193.

Also wherever the Interest only is hazarded 193.

Whether securities grounded upon Usurious Contracts void in the hands of third persons not privy to the Usury 213.

Note on an usurious contract void in the hands of a third person not privy 214.

Shall never become so *ex post facto* 219.

Must be specified in pleading as to sum time place and person 223.

*Taking.*

Jews could not take Usury or Interest of minors 79. 81. 103.

Above the rate allowed of by Statute usurious at common law as before the Statute 131.

6 per cent. allowed on securities in Ireland and Plantations 142. 203.

Treble damages for taking usurious Interest 152. 153.

Without contract avoids not the security 156. 157.

Lord Hardwicke says they will upon the word *take* 172.

Withholding the Interest out of the Principal usurious 173.

This opinion overruled by C. P. 179.

In pleading must be specified as to sum time and place 223.

*Penalties.*

Contained in different Statutes 129.

Forfeiture and imprisonment by 5 and 6 Ed. VI. 133.

Ditto of half by 13 Eliz.

*Punishments.*

By the Ordinaries 67. 72. 75. 76. 126.

Sometimes in Common Law Courts 71. 72. 75. 76.

Live Usurers not usually punished 79.

Disherison of the heir for the Usury of the ancestors 79.

Severe against Christian Usurers 80.

Forfeiture and imprisonment at King's will by Act of Ed. VI. 133.

*Pramunire* for drivers of bargains against 37 Hen. VII. 133.

Forfeiture and punishments under 13 Eliz. 133.

Treble damages on fraudulent securities in Ireland and Plantations 143.

*Value.—Vid. Inadequacy of Price.*

Difference between the market price and real value of Annuities 282.

(App. No. XXI. at large).

*Vendee.—Vid. Annuity.**Vendor.—Vid. Annuity.**Void and Voidable.—Vid. Usury Annuities Deeds Securities.**Voluntary Annuities.*

Excepted out of the Act 347.

*Warrant*

## GENERAL INDEX.

*Warrant of Attorney.*

To confess judgment on Annuity bonds to be registered 359.

*Will.*

Annuities under will excepted out of the Act 346. 453. 454.

*Witnesses.*

Borrower may be a witness to prove Usury 216.

The names of all the witnesses to Annuity deeds must be mentioned in the memorial 366. 367.



FINIS.



